

STATE OF VERMONT'S RESPONSE  
TO PETITION FOR FEDERAL ACKNOWLEDGMENT  
OF THE ST. FRANCIS/SOKOKI BAND  
OF THE ABENAKI NATION OF VERMONT

STATE OF VERMONT  
WILLIAM H. SORRELL, ATTORNEY GENERAL  
Eve Jacobs-Carnahan, Special Assistant Attorney General  
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## ABBREVIATIONS

The following abbreviations are used throughout this Response:

Petition	refers to the Petition for Federal Recognition as an American Indian Tribe submitted to the Bureau of Indian Affairs by the Abenaki Nation of Vermont dated October 1982
Petition Addendum	refers to the Addendum to the Petition for Federal Recognition as an American Indian Tribe submitted to the Bureau of Indian Affairs by the Abenaki Nation of Vermont, January 10, 1986, in Response to the Letter of Obvious Deficiencies and Significant Omissions (6/14/83), Part B
Second Addendum	refers to the Second Addendum to the Petition for Federal Recognition as a Native-American Indian Tribe, Genealogy of the Abenaki Nation of Missisquoi, submitted to the Bureau of Indian Affairs by the Abenaki Nation of Missisquoi, Vermont, December 11, 1995
Family Descendancy Charts	refers to genealogical charts submitted by petitioner as part of the Second Addendum in December 1995



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## INTRODUCTION

This Response to the Petition for Federal Recognition of the St. Francis/Sokoki Band of the Abenaki Nation of Vermont is submitted by the Vermont Attorney General's Office on behalf of the State of Vermont. The response follows the format of recent proposed findings and final determinations issued by the Bureau of Indian Affairs ("BIA"). After an examination of the historical background of Indians in Vermont, the response addresses four of the criteria for federal acknowledgment set forth in the federal regulations at 25 C.F.R. 87. Two affidavits of experts consulted by the State are attached to this Response to the Petition. Accompanying this filing is a collection of Exhibits comprised of articles, government records, newspapers, and manuscripts that are referred to in the response.<sup>1</sup>

## HISTORICAL BACKGROUND

### **Historic Tribe Elusive**

A natural starting point in the historical examination of an Indian tribe would be the identification of the historic tribe. In this case, that is not so easy. The petition itself illustrates the difficulty. The original petition was submitted in 1982 by the St. Francis/Sokoki Band of the Abenaki Nation of Vermont. *See* "Resolution of Abenaki Tribal Council" (Petition:ii). Later correspondence to the BIA is from the Sovereign Republic of the Abenaki Nation of Missisquoi. *See, e.g.*, 1995 Certification of Records with re-submitted

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<sup>1</sup> To avoid duplication, for the most part, documents cited in the Response which were provided to the BIA's Branch of Acknowledgment and Research by the petitioner have not been included in the State's exhibits.

petition. These two different names for the petitioner suggest three possible historic tribes: St. Francis Abenaki, Sokoki, and Missisquoi.

The St. Francis Abenaki is, and was, a Canadian tribe based in St. Francis, Quebec, also known as Odanak, Quebec. The Sokoki, a tribe within the Wabanaki confederacy, inhabited the Connecticut River Valley along the border between Vermont and New Hampshire. During the seventeenth and eighteenth centuries they resettled at Odanak/St. Francis. In fact they may have been the earliest residents of Odanak/St. Francis (Day 1981b:12-15, Haviland & Power 1994:219-27). The Missisquois inhabited the upper Lake Champlain region on the western side of Vermont. They have often been thought to be an offshoot of the Abenaki tribe at Odanak/St. Francis.<sup>2</sup> Even the petitioner admits that “the Missisquoi villagers were never a tribe,” but rather a changing group of families who hunted in the area (Petition:15). The confusion in nomenclature in the petitioner’s own submissions may indicate a more serious ambiguity as to identity and an uncertainty about community and descendancy.

The word Abenaki (or Wabanaki) refers to a group of Algonquian speaking tribes in Northern New England. Abenaki means “people of the dawn.” They are divided into the Eastern Abenaki and the Western Abenaki. The Eastern Abenakis originally inhabited Maine and parts of New Hampshire. The name for these people stems from coastal view of the sun rise. Eastern Abenaki groups or tribes include the Penobscot and Maliseet. Western Abenaki include the Sokokis and Cowasucks of the upper and middle Connecticut River

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<sup>2</sup> Indeed, the relationship between the St. Francis Abenaki and the Missisquoi groups is an intriguing puzzle embedded in this petition. If the Missisquoi was a separate tribal entity from the Abenaki at Odanak/St. Francis, then *that* historic tribe would have a claim for acknowledgment in the United States. If the Abenakis at Missisquoi were only an outlying temporary settlement of the St. Francis Abenakis then their claim should be directed toward Canadian First Nation status and the reservation

Valley of Vermont and New Hampshire, the Pennacooks and Winnepesaukees of the upper Merrimack River in New Hampshire, and the Missisquoi on Lake Champlain (Calloway 1986:198, Dickason 1990:87).

The petitioner claims its historic origins lie in the northern Lake Champlain Valley, near Missisquoi Bay in Swanton, Vermont, the same area in which most of its members reside at present. This would suggest that petitioner's members view themselves as descendants of the Missisquoi, not the Sokokis. The history of the Abenakis of Missisquoi and those of Odanak/St. Francis is extensively intertwined. The inclusion of the St. Francis tribal name in the petitioner's original submission indicates a sense of affiliation with that Canadian tribe. One theme of this Response to the Petition is that the Missisquois drew closer and closer to the Abenakis of Odanak/St. Francis so that by 1800 they were indistinguishable.<sup>3</sup>

### **Major Scholars of the Western Abenakis**

The scholar who devoted the most time to studying the Western Abenaki was Gordon Day. He was an ethnolinguist at Dartmouth College and the National Museum of Man (now the Canadian Museum of Civilization) in Hull, Quebec, where he held increasingly responsible positions over 35 years. Through his efforts to find native speakers of the Abenaki language, he uncovered the history of the people. As a child growing up in Vermont, he was intrigued by stories of Indians. Day spent two decades searching for and

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established in Quebec. As will become evident in this Response, the ultimate significance of this puzzle may not matter, given the post-1800 history of Indians, or the lack thereof, in Vermont.

<sup>3</sup> In this historical survey, care has been taken to avoid generalizations about Abenakis, or even Western Abenakis, since it is not clear that the history of the Missisquoi, for example, is the same as the history of the Sokokis, Cowasucks or Penobscots.

interviewing Abenaki speakers in Vermont, New York, Maine, and Quebec in the 1950's and 1960's. He continued his analysis and writing about Western Abenaki through the 1980's. For details of his life, see the biography of Day in the "Introduction" to *In Search of New England's Native Past: Selected Essays by Gordon M. Day* edited by Michael K. Foster and William Cowan (1998).

One of the scholars who Day met in his travels was a Catholic priest in Quebec who was himself an expert on the Abenakis. Father Thomas-M. Charland made a significant contribution to the understanding of the history of the Abenaki with his work, including his book *Histoire des Abénakis d'Odanak, 1675-1937* (1964). Day met Charland during his research trips and described him as a "careful scholar" (Day, 1981b:39).

Among more contemporary scholars, the one who has written and published the most about the Western Abenaki is Colin Calloway. Calloway's contribution lies less in the realm of significant new research, than in his clear and graceful writing. He primarily took Gordon Day's work and put it in a larger perspective or connected it to other events in New England.<sup>4</sup> The only area in which Calloway adds information to Day's work is in his smattering of references to events in the nineteenth century. However, this is not his own research; rather, it is traceable to unpublished writings of John Moody, an advocate for the Abenaki who authored the instant petition (Haviland & Power, 1994:301, Petition:ii-iii). Moody's writing and his influence will be discussed in the section, *Comments on Recent Scholarship*.

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<sup>4</sup> In his book *The Western Abenakis of Vermont 1600-1800* (1990:xix) Calloway wrote: "Anyone familiar with the literature will recognize my indebtedness to the handful of scholars who have published on the western Abenakis. Without the pioneering work of Gordon M. Day, Director Emeritus of the Canadian Ethnology Service, students of western Abenaki history and culture would still be groping in the dark."

## SEVENTEENTH CENTURY

### **Seventeenth-Century History is Sketchy**

We have a sketchy picture of Indians in northwestern Vermont for most of the seventeenth century. As Gordon Day wrote in the *Handbook of North American Indians*, “The Western Abenaki have always been something of an unknown quantity to historians and ethnographers” (Day 1978b:149). The history of the Indian village of Missisquoi and the identity of the people there have posed particular difficulties for historians over the years. The origins of Missisquoi are unknown (Day 1981b:64). “This problem is part of a larger phenomenon, namely, a general deficit of ethnographic information for all northwestern New England” (Day 1971:116). The movements of the Western Abenaki people “were not the principal concern of historians, either French or English, and this has weakened the record” (Day 1981b:62).

Most histories have dealt with the lack of direct information about Missisquoi and Indians in northwestern Vermont by writing *around* them. For example, in *The Original Vermonters*, Haviland and Power approach the seventeenth-century history of Vermont by devoting their discussion of that time period to “places other than Vermont.” (Haviland & Power 1994:206-30). The bulk of the histories of Abenakis focus on the Eastern Abenakis of Maine, their migration to Quebec, and the subsequent events surrounding Odanak/St. Francis.

While Samuel de Champlain visited Vermont and the lake that bears his name in 1609, he did not interact with any Indians on the northern end of the lake. His guides told him that the lake’s eastern shore and islands had been deserted (Calloway 1990a:71).

Gordon Day believed that the area had been fairly recently deserted—by Abenakis who fled the wars between the Iroquois and Mahicans (Day 1971:117-18).

There seems to be general agreement that Lake Champlain was a boundary between the Iroquois and the Western Abenakis (Day 1971:*passim*). However, at various times the Iroquois had claimed lands on the eastern side of the lake, and both Iroquois and Abenakis had hunted and traveled through areas east of the lake (Calloway1986:197, 215 & n.59). It is also known that Lake Champlain was used as a major travel route by Iroquois for attacks on New France in the seventeenth century (Day 1971:118).

By 1682 there were probably Penacook and Sokoki Indians on Lake Champlain. However speculation remains as to whether they were at the northern most reaches of the lake in Canada, or on parts of the lake in Vermont (Day 1981b:22-24, 38, Dickason 1990: 87). How many natives lived or hunted in this area is a subject of debate. The petition claims there were as many as 4,000 Abenakis in the Missisquoi region (Petition:13). Professor John Dickinson, an historian at the Université de Montréal, disputes this figure (Dickinson Affidavit, Attachment B, 2).<sup>5</sup> Noting the tendency of authors at certain periods to exaggerate population, he states that

[t]he only clear evidence available concerns the eighteenth century, and it would seem that the 60 to 80 warriors mentioned in French documents regarding the village Missisquoi relate to an Abenaki community of some 300-400 people. (Dickinson Affidavit, Attachment B, 2).

The petitioner's interest in rejecting the lower figure for population size is evident: if, as they argue, there was a greater number of natives as Missisquoi in the seventeenth century, then that bolsters the argument that the migration to Canada in the eighteenth

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<sup>5</sup> Professor Dickinson's affidavit is attached to this Response.

century accounted for only a small portion of their numbers and left a significant number still at Missisquoi.<sup>6</sup>

### **Some Noteworthy Events of the Seventeenth-Century**

In 1662-64 the Western Abenakis began to retreat, in small numbers, to Quebec due to wars with the Iroquois (Dickason 1990:86 & n. 28). During this time, the Iroquois terrorized all the Algonquian tribes as far east as Maine (Haviland & Power 1994:225). The Abenakis, for the most part, were allied with the French, so they tended to seek refuge in New France<sup>7</sup> (Haviland & Power 1994:219-23). By contrast, the Iroquois were allies of the English. Around this same time, the first settlement of Europeans in the area of Lake Champlain occurred in the form of a French mission and fort of Sainte-Anne on Isle la Motte in 1666 (Huden 1956:116, Calloway 1990a:72).

The year 1675 was a significant one for the Western Abenakis (Dickason 1990:86). In that year, King Philip's War erupted—a war between the British colonists and Indians in southern New England.<sup>8</sup> One immediate consequence of King Philip's War was the creation of the refugee village at Schaghticoke on the Hudson River in New York. Many Indians from the Connecticut River valley, including Sokokis, fled to Schaghticoke at this time (Day

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<sup>6</sup> The petition rejects, as low, Day's estimate of 5,000 natives for the larger region encompassing not only Lake Champlain, but also the Merrimack River in New Hampshire and the upper Connecticut River (Petition:12). Professor Dickinson's own studies of native populations led him to conclude Day's estimate was quite reasonable. (Dickinson affidavit, Attachment B, 2).

<sup>7</sup> The alliance of the Abenakis with the French was not entirely consistent and continuous. It required maintenance by the French in order to prevent it from deteriorating (Dickason 1990).

<sup>8</sup> Named for the Wampanoag Indian Chief Philip, King Philip's War was the start of a series of wars between the British and the Abenakis, which lasted 85 years (Haviland & Power 1994:227).

1981b:29). A further effect of the war was the movement of large numbers of Western Abenakis into Canada (Dickason 1990:86, Calloway 1990:75).

The search for safer regions during King Philip's War in 1675 led some natives to move to Missisquoi as well (Haviland & Power 1994:227, Day 1978b:150-51). Over the next 25 years, the Lake Champlain Valley was visited by hunters from Schaghticoke, and groups of Indians left Schaghticoke and settled for a time at Missisquoi before moving on to settle farther north in Quebec (Day 1981b:30, Calloway 1986:208-10, 216, Haviland & Power 1994:228).

The wars between the Abenakis and the English, coupled with the English alliance with the Abenakis' historic enemy the Iroquois, had the effect of increasing ties between the Abenakis and the French (Dickason 1990:86, Calloway, 1990a:73). The French Jesuits' spread of Catholicism to the Abenakis also firmed up ties between them (Calloway, 1990a:72). The influx of Western Abenakis, from Maine, New Hampshire, and Vermont, filled the French mission at Sillery, near Quebec City. This prompted the Jesuits to establish a new mission to accommodate 600 Abenakis in 1683 at St. Francois-de-Sales on the Chaudière River (Dickason 1990:88, Calloway 1986:221, Dickinson & Grabowski 1993:59). In 1700 this mission was transferred to the one on the St. Francis River (Dickason 1990:88). The latter became the site of the Indian village of St. Francis, also known as Odanak.

## EIGHTEENTH CENTURY

### **Population Movements In and Out of Missisquoi During the Eighteenth Century**

Describing both the seventeenth and eighteenth centuries, Calloway wrote:

Direct documentary evidence of the western Abenakis is scarce in the early historic period. The sources are relatively rich in information about the

colonists' dealings with the Iroquois of New York, the eastern Abenakis of Maine, and the Algonquian peoples of southern New England. But the Sokokis, the Cowasucks, the Missisquois and their neighbors appear only fleetingly in the French and English records, which offer tantalizing glimpses rather than a composite picture of Vermont and New Hampshire's Indian inhabitants. (Calloway 1990b:xvi-xvii).

The effect of the paucity of primary sources leads to some degree of speculation and hypothesis by all the scholars who have investigated these people. The dominant feature of the eighteenth century is the ebb and flow of the population of the Indians at Missisquoi. The century ends with their retreat to the safety of Odanak/St. Francis in Canada. The central question for this time period is to what extent was there a permanent settlement of an independent tribal entity at Missisquoi.

The eighteenth century can be divided into roughly five periods to describe the population changes at Missisquoi. The first period is the one in which Missisquoi was dominated by Chief Grey Lock, from 1712 to 1730. The second period, from 1730 to 1740, is known for an epidemic and its aftermath. The third period, from 1743 through 1760, was marked by the movement of Indians from Missisquoi to Odanak/St. Francis, resulting in an abandonment of the Missisquoi village. The fourth period, from 1763 to 1775, saw a return of Abenakis from Odanak to Missisquoi. Around 1775, with the start of the American Revolution, the Abenakis retreated to Odanak/St. Francis and were largely absent from Missisquoi for the rest of the century.

As one traces the Abenaki population at Missisquoi through the 1700's, it often bears an inverse correspondence to the population at St. Francis/Odanak. That is because when the Abenakis retreated from Missisquoi, they usually went to Odanak (Dickinson Affidavit, Attachment B, 4). At Odanak, they were farther from their English enemies and were surrounded by their French allies. Missisquoi was essentially the southern frontier for the

French. When wars heated up between the French and the English, it was safer to retreat northward. In their article “Les Populations Amérindiennes de la Vallé Laurentienne 1608-1765,” Dickinson and Grabowski examined these movements from the Canadian perspective. They observed a growth of Indian populations at the missions in Quebec (New France) during times of French-British hostilities, and a decrease in those populations as Indians returned to New England during peacetime. (Dickinson & Grabowski 1993:60).<sup>9</sup>

At the end of the eighteenth century, the bulk of the Indians from Missisquoi ultimately settled at St. Francis. As Day concluded in his article “Missisquoi: A New Look at an Old Village,” the Missisquoi culture and language continued to survive for centuries at Odanak, and nowhere else (Day 1973:56, Day, 1971:*passim*, especially 121).

### Grey Lock’s Dominance

The dominant character of the first period in the eighteenth century at Missisquoi was Chief Grey Lock. He was a Worronoco Indian from the Westfield River region of Massachusetts. His Indian name was Wawenorrawot.<sup>10</sup> Historians believe he was a refugee from King Philip’s War (1675-76), who was pushed out of Massachusetts and went to the Hudson River region of New York (Calloway 1987, Day 1966). He settled for a time at Schaghticoke in Mahican territory, and was at Missisquoi as early as 1712. (Haviland & Power 1994:230). By 1723 Grey Lock was the leader of a large group of warriors from Schaghticoke who settled with him in the Missisquoi region of Lake Champlain. His base

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<sup>9</sup> They wrote: If around 1710, the population of the missions approached 3,000, it shrank to around 2,300 in 1715. But the tensions between Abenakis and British became newly embittered starting in 1722, creating a new wave of migrations [to the missions in New France].

<sup>10</sup> Day traces this name to Wahawanulet and Wawanolet at St. Francis/Odanak, and to the Nolet family at Odanak in the twentieth century (Day 1981b:99).

was a pallisaded area, sometimes called Grey Lock's Castle, some distance from the main Missisquoi settlement (Calloway 1986:218). Grey Lock continued to attract warriors from Schaghticoke during the 1720's. He was well known to the English for the raids he conducted on their settlements in Massachusetts from 1712-1727. This period of growth at Missisquoi was marked by Grey Lock's dominance and raids on European settlers.

#### Epidemic and Slow Repopulation: 1730-1740

In 1730 there was a smallpox epidemic at Missisquoi.<sup>11</sup> As a result, the Indians abandoned the village and went north to St. Francis (Perry 1882:954, Haviland & Power 1994:233, Day 1981b:64). Some of these Indians began to return to Missisquoi in 1731, but the village was not completely resettled until 1740. So, during the decade of the 1730's there was a gradual movement of Indians from St. Francis down to Missisquoi (Day 1981b:38-40, 64). As Professor Dickinson points out, there is no definitive proof as to whether or not the Indians who settled at Missisquoi during this period were originally from the area (Dickinson Affidavit, Attachment B, 4).

As a general matter, the French saw their friendship with (indeed, their reliance upon) the Abenakis as the best possible protection against their enemies, the English and the Iroquois (Dickason 1990:91, 93-94). The French encouraged the Indians to return to Missisquoi to provide a buffer between their own settlements to the north and the English settlements farther south (Haviland & Power 1994:233). They undertook several efforts in

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<sup>11</sup> One source states there was a plague at Missisquoi in 1725. It is unclear whether this was a separate event from the smallpox epidemic or not. The effect seems to have been the same (Aldrich, 1891:27-28).

this connection. In 1731 they built Fort St. Frederic, at Crown Point, on the southern part of Lake Champlain. There was an Abenaki interpreter employed at the fort (Charland 1961:4).

The French also encouraged the settlement of an Indian village on the northern end of Lake Champlain to prevent the isolation of the fort. And there is evidence that the Abenakis of Missisquoi used Fort St. Frederic for religious purposes. The role of missionaries in furthering the French-Abenaki alliance was key (Dickason 1990:88-89). The French wanted to cultivate ties to the Abenakis at Missisquoi to prevent them from becoming too friendly with the English, and from trading beaver pelts with them instead of with the French (Charland 1961:6-7). The French viewed the Indians at Missisquoi as part of the St. Francis Indians, as evidenced by a French warrior count in 1736 that listed them altogether as if all of one group (Day 1981b:40, Charland 1961:9). The French efforts to encourage Abenaki migration from Odanak/St. Francis to Missisquoi during the 1730's reflect this.

#### Missisquoi Villagers Move to Odanak/St. Francis: 1744-1760

The third period, from 1744 to 1760, saw a general exodus, in varying degrees, from Missisquoi to St. Francis. While the first four years of this period saw two seemingly contradictory trends, the last decade saw the abandonment of the village at Missisquoi. The years of 1744-1748 were the years of King George's War, the wars of the Austrian Succession. Most of the Indians evacuated the Missisquoi village during this war (Calloway, 1986:218). Missisquoi warriors aided the French in military campaigns during these years (Charland 1961:9-10).

At the same time, King Louis XV of France sought to find ways to wean the Abenakis from the English and keep them at Missisquoi (Day 1973:53). So, the French

established a Jesuit mission at Missisquoi and even built a house for a missionary there (Charland 1961:7). They built a chapel as well, though in Alburg, not Missisquoi (Haviland & Power 1994:234). Father Etienne Lauverjat, formerly missionary to Abenakis at St. Francis and at Old Town, Maine, was sent to Missisquoi and stayed there from 1744 to 1748 (Ledoux 1988:136). In addition to serving the Abenakis who were at Missisquoi, the French also hoped to attract the “Loups from Orange” (Albany, NY), by which they probably meant the Schaghticokes (Calloway 1986:218). These efforts were quite successful, and there was a steady exodus of Schaghticokes from 1744 through 1754 to both Missisquoi and St. Francis (Calloway, 1986:208-210). In addition, one seigneur in Quebec sought to transfer all the Abenakis from his fief to Missisquoi so he could have more land to himself (Day 1973:53, Charland 1961:4-6).

In sum, the years 1744-1748 were marked by two movements: (1) the movement of Abenakis out of the Missisquoi village either to aid in the war against the English or to seek shelter, and (2) the movement of Schaghticokes into Missisquoi, often as a pass through on their way to St. Francis. The French were happy to attract the Schaghticoke, and they also attempted to slow down the exodus out of Missisquoi. Their placement of a Jesuit missionary in the area was an attempt to encourage the Abenakis to stay at Missisquoi.

The net effect of these movements by the end of the war was a fairly empty village at Missisquoi, no missionary presence, and no significant buffer against the English. So, in 1748 the French King granted a seigneurie at Missisquoi to Levasseur, the King’s shipbuilder. He built a sawmill in 1749 (Haviland & Power 1994:234). In this same year French court documents reveal that the King was once again seeking to establish a mission for the Abenakis at Missisquoi and thereby protect the French by creating a buffer against the hostile

English in New England (Charland 1961:8-9). The Missisquoi village's population was reestablished in 1749 (Charland 1961:9).

The petitioner overstates the size of the Abenaki population at Missisquoi during this period (Petition:32). It asserts that Missisquoi grew at the same rate as Odanak/St. Francis (Petition:32). This theory is unsupported and contrary to other research. As Professor Dickinson explains:

The population counts on page 32 are speculative. There was a lot of population movement, but it is unlikely that the Abenaki of St. François and Missisquoi would have grown to more than 1300-1500 in the period. The Missisquoi population for the 1750s seems very optimistic since the village was on the front line and the growth of Odanak is probably attributable to families moving back there from Missisquoi. The number of hunting bands in the interior would have [ ] been based at a permanent settlement (probably St-François). (Dickinson Affidavit, Attachment B, 4).

The petition calculates a population of 500-750 at Missisquoi based on Bougainville's count of 100-150 warriors (Petition:33). According to Dickinson, this is a misreading of Bougainville's figure:

Bougainville's report concerns warriors that were with the army and they came from St-François as well as from Missisquoi. I believe that it would be wrong to assume that the 100 to 150 men were all from Missisquoi. (Dickinson Affidavit, Attachment B, 4-5).

This resettlement at Missisquoi was short-lived. The Seven Years' War, from 1754 to 1760, caused further upheavals. The French were defeated at Lake George, just south of Lake Champlain, in 1755, bringing the war closer to Missisquoi. In 1757 the British burned the sawmill at Missisquoi (Haviland & Power 1994:236). By 1757 Abenakis stopped going to Fort St. Frederic because it was unsafe; they went north to Chambly or Fort St. Jean in Canada instead (Haviland & Power 1994:236). Then, in 1759, the French blew up Fort Carillon and Fort St. Frederic to prevent their capture and use by the British (Charland

1961:11, Haviland & Power 1994:236). The Abenakis departed Missisquoi in 1758 and early 1759 to seek shelter at the two well-established Abenaki communities in Quebec: St. Francis and Becancour (Calloway 1990a:75, Charland 1961:11, Day 1981b:65). Thus this period ends with the abandonment of the Missisquoi village.

Between the third and fourth periods there is some uncertainty about the village at Missisquoi. Rogers' Rangers attacked St. Francis in October of 1759. While many, many Abenakis were killed in that raid, Day has established that the entire village was not wiped out (Day 1981b:43-46, Haviland & Power 1994:237). The Abenakis of St. Francis scattered to Maine, St. Regis, west to the Mississippi, and other places after the raid (Day 1981b:47-48, Calloway 1990b:189). At the same time, in 1761, Father Pierre Roubaud, a Jesuit priest who had served as missionary to the Abenakis at Odanak/St. Francis for many years, advised the British Indian Officer Sir William Johnson that he would be wise to discourage the association of the Abenakis with the western Indian tribes. He advocated that efforts be made to re-connect them to their homelands:

[N]othing is more prejudicial to the Service as such Journeys of Indns. To strange Nations. That wch. Would make the Abinaquis a faithful People is to draw them to their native Country, some to Acadia & others to Albany where they come from. (Calloway 1990b:191).

He makes no mention of Missisquoi. Although the petition claims (at page 33) that there was a flourishing Indian village at Missisquoi, in 1759, this is highly speculative. The claim is based on the report of an English soldier returning from war in Quebec. Day explained the unlikelihood of this statement being accurate. He concluded it was either incorrectly reported or that it referred to an empty village that the soldier knew to be normally occupied—perhaps before he went off to war (Day 1981b:45).

### Return to Missisquoi: 1763-1775

By 1763 many Abenakis were back at Missisquoi, and this began a period of *relative* stability at Missisquoi (Calloway,1990a:75). Most of the Abenakis remained there until the start of the American Revolution, 1775 or 1776 (Day 1981b:49). The primary characteristic of this fourth period of time during the eighteenth century was the influx of English settlers into this northern area of New England (Calloway 1986:219). The Treaty of Paris that formally ended the Seven Years' War in 1763 gave most of New France to the British. St. Francis/Odanak was within British territory after the war. Sir William Johnson, Superintendent of the British Indian Department, wanted to contain all the Abenakis at Odanak where the British could keep an eye on them, but this attempt was unsuccessful (Calloway 1990a:75). After all, the British had a history of antagonistic relations with the Abenakis.

The end of the war also created a boundary line between Canada and New York.<sup>12</sup> This created somewhat of a separation between St. Francis and Missisquoi, but a separation that the Abenakis sought to minimize (Day 1973:55). We know that at this time the Abenakis in general were closely affiliated with the Abenakis at St. Francis (Haviland & Power 1994:240). The question of how closely tied politically Missisquoi was to the St. Francis Abenaki is an enduring puzzle. It is one that we put to Professor Dickinson of the University of Montreal. Based on his extensive knowledge of the history of New France and native cultures in the region, he concluded that:

Abenaki movement to Missisquoi clearly fit in with French imperial policy but only in as much as Missisquoi was still a subdivision of the St. Francis Abenaki. Until the American Revolution, nothing disrupted the unity between two villages sharing common family ties and political goals. "Authority" was

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<sup>12</sup> Vermont was considered part of New York at this time.

centred in St. Francis as the parent community. (Dickinson Affidavit, Attachment C, 2).

As Day observed, some Abenakis moved back to St. Francis to join their relatives in this 1763-1775 period, though this movement became much more significant after 1775 (Day 1973:55). James Robertson's lease of 1765 is one example of Abenakis leasing land to the English and moving away. The fact that this lease of land at Missisquoi is for 91 years suggests that the Abenakis had no immediate intention of returning to use the land (Day 1973:55). John Moody's contrary reading of the lease is tenuous at best (Petition:38). While the lease may indicate that not all Abenaki families departed at once, there is no doubt that at least some of them left in 1765; otherwise, they would not have been relinquishing their land for 91 years. The real significance of Robertson's lease is that it is the only existing list of names of Missisquoi Abenakis prior to the 1970's.<sup>13</sup>

Also in the year 1765, Moses Hazen sought a grant of land on the Missisquoi River from the British Governor of Lower Canada (Quebec). The petitioner points to the refusal of the Governor to approve this grant as an indication that the Abenakis had not left the area (Petition:37). However, the actual letters of the Governor's secretary are not so clear. Secretary Goldfrap called off the survey in order to ascertain whether the lands belonged to Indians or not. He wrote to Lieutenant Scott, who was stationed at Montreal, on March 29, 1765, as follows:

His said Excellency and Council accordingly ordered a Warrant of survey Directed to the Surveyor General in the usual Form, since which information has been Received that the Lands so petitioned for, are the property of an *Indian Nation Inhabiting near Montreal*; it is therefore Desired that you will make ample Inquiry of the said Indians, or of any other people touching their pretention thereto...(Goldfrap 3/29/1765)(emphasis added).

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<sup>13</sup> The petitioner acknowledges the fact that there are no historical lists of members of the Missisquoi Abenaki (Petition:169).

There is nothing in that correspondence that identifies the owners of the land as Abenakis.<sup>14</sup> Rather than confirming that Indians were living on the Missisquoi in 1765, this letter raises the possibility that the land belonged to Indians who *formerly* lived on the Missisquoi, but had since left and were then living *near Montreal*. Alternatively, it suggests that a spokesperson for the Indians on the Missisquoi could be found near Montreal, raising the possibility that the political center of that Indian group was based near Montreal. Thus the Indians referenced by that correspondence could be the Caughnawagha Mohawks,<sup>15</sup> either in their own right or as spokesmen for the Seven Nations, which included the St. Francis Abenakis.

In September 1766 the British Governor of New York<sup>16</sup> and the British Governor of Quebec met at Isle la Motte to settle the boundary between them. Also present were representatives of the Caughnawagha and Missisquoi Indians. As the petitioner explains, the Caughnawaghas spoke to secure their hunting rights around Lake Champlain, but then the Missisquoi Indians spoke as well. They said:

We the Misisqui Indns. of the Abinaquis or St. Johns Tribe have inhabited that part of Lake Champlain time unknown to any of Us here present without being molested or any ones claiming any Right to it to our Knowledge, Except abt. 18 Years ago the French Govr. & Intendt. came there & viewed a Spot

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<sup>14</sup> Haviland & Power overstate the evidence, perhaps because this section of their book is not based on their own research (Haviland & Power 1994:239). Rather, as they state in the bibliographic notes, “[f]or events following 1763, we have relied almost exclusively on Moody (1979) and data from the Abenaki petition [for federal acknowledgment] (1982) and its addendum (1986), much of which were gathered by Moody” (Haviland & Power 1994:301).

<sup>15</sup> The Caughnawagha (or Kahnawake) Mohawks were Catholic Mohawks who broke away from the communities of the League of Iroquois tribes (MacLeod 1996:xi). They established the village of Kahnawake on the St. Lawrence River in Canada, along with the village of Akwesasne, which was also known by the name of its mission, St. Regis. These villages were part of the Seven Villages, or Seven Nations of Canada which included the following: the Iroquois of Akwesasne, Kanasetake/Oka, Kahnawake, Oswegatchie, the Abenakis of Odanak, and Becancour, and the Hurons of Lorette.

<sup>16</sup> Vermont was a part of New York at that time.

convenient for a Saw mill to facilitate the building of Vessells & Batteaux at St. Johns as well as for building of ships at Quebec...(Johnson vol. 12:173).

The Missisquois expected the French to leave after the Seven Years' War, but instead "some English people came there to rebuild the Mill, and now claim 3 Leagues in breath & we don't know how many deep wch. would take in our Village & plantations by far" (Johnson vol. 12:173).

The petitioner stresses two aspects of this statement. First, petitioner emphasizes the length of habitation by the Missisquois on Lake Champlain (Petition:39). They had been here a long time—at least since the late seventeenth century—and that was certainly "time unknown to any of Us here" when they spoke one hundred years later in 1766. However, that statement says nothing about the gaps in continuity that would occur in the following century as the English settlers took over more and more of the area.

The other point petitioner makes is that there is confusion in the name of the group. Petitioner indicates that one version of this speech identifies the Missisquois as "of the Abinquis or St. Johns tribe," and another identifies them as "of the St. Francis or Abenakis Tribe" (Petition:40, Calloway 1990b:195). This confusion of names proves only that they were not regarded as an independent tribe. Both versions describe them as appendages of a larger Canadian tribe of Abenakis—based either at Odanak/St. Francis or St. John.<sup>17</sup>

Petitioner asserts that in 1770 Missisquoi was still considered home to a group of Abenakis who were living at St. Regis/Akwesasne. In support it relies on the following statement made to Sir William Johnson, Superintendent of Indian Affairs, at a congress of Indians at German Flatts, N.Y. in July 1770:

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<sup>17</sup> St. John, or St. Jean, is on the Richelieu River in Quebec (*see* Map, p. vi.). See discussion below of Ira Allen complaining to General Haldimand of Indians being incited at St. Jean to harass the Americans in Vermont.

In 2 years time, we can find out another place, as we have land of our own, but it is now cut into pieces by the English, except a small piece. We shall go as soon as we have time to see whether the English have left us any; if they have we will move there and you shall never more hear of any dispute or trouble about us. (Petition:41, Day 1981b:48, Johnson vol. 12:845).

Contrary to the petitioner's view, this passage only generates more questions: where is this "land of our own," and if there was still an Indian community there, what was its condition? As Professor Dickinson notes, this statement is not necessarily "an indication that Missisquoi was considered their territory" (Dickinson Affidavit, Attachment B, 6).

The group of Abenakis who made that statement had fled to St. Regis for protection among the Mohawks after Rogers' Raid on Odanak/St. Francis in 1759 (Frisch:1971). Day's analysis led him to argue that these refugees may actually have been Schaghticokes who had been living with the Abenakis at Odanak/St. Francis (Day 1981b:47, 64, Calloway 1990b:197). The Schaghticokes, he explained, would have been more comfortable with the St. Regis Mohawks from their prior associations with the Iroquois (Day 1981b:47). The statements made in 1770 on which petitioner relies came in the wake of intense disputes that arose between the Abenakis and the Akwesasne/St. Regis (Frisch 1971:27). After several requests by the St. Regis Mohawks for the British to remove the Abenakis from their village, the British instructed the Abenakis, and their white French interpreter John Jacob Hertel, to leave.

Petitioner concedes that no one has confirmed where the Abenakis (or Schaghticokes) went when they left St. Regis (Petition:41). Day found no evidence that they moved as a band to either Odanak/St. Francis or Missisquoi (Day 1981b:48). There is evidence that many went to Cornwall Island, south of St. Regis in 1771 (Johnson vol. 8:214). Calloway says that from there they were eventually absorbed into the Mohawk community (Calloway,

1990b:200-01). Thus, the fact that they claimed to have “land of their own,” did not mean they returned to it and re-established a village there. Indeed, they had said that they needed to check on that land, because it had been carved into pieces by the English.

Also, it is not entirely clear where the land referred to in the above statement is located. The July 1770 statement itself does not say (Dickinson Affidavit, Attachment B, 6). Calloway and Day suggest that a fragment of a letter from Col. Daniel Claus to Sir William Johnson indicates that the land was at Missisquoi (Calloway 1990b:200, Day 1981b:48 citing Johnson vol. 7:897). This fragment, in a letter of September 1770, reads as follows:

Mr. Hertell says he did not carry the french Answer to the Abinaquis, but that [ ] essential as Your last Reply upon their asking [ ] two years time allowd them to establish themse[ives ] Misisqui, and their house finished at St. Regis [ ] they say you granted, I should be glad to have [ ] of it as son as possible that I may acquaint [the Augh]quiasne Indns. wth. The Truth of ye Matter. (Johnson vol. 7:897)

While the missing words could lead to more than one reading, it is quite possible this passage only means that they hoped to establish themselves at Missisquoi during the next two years, not that there was a sufficiently stable Indian community there to absorb them at the time.<sup>18</sup> And, since Johnson did not allow the Abenakis to stay at St. Regis another two years, they may never have carried out their plans.

So, while the Abenaki population at Missisquoi was somewhat stabilized from 1763 to 1775, there was also a general increase in British settlement. This meant more conflicts with the British over land.

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<sup>18</sup> One version could be: “Mr. Hertell says he did not carry the french answer to the Abinaquis, but that [it was not] essential as your last Reply upon their asking [for yet] two years time allowed them to establish thems[elves anew] at Misisqui, and their house finished at St. Regis which they say you granted, I should be glad to have [word] of it as soon as possible that I may acquaint [the Augh]quiasne Indns with the Truth of ye Matter.”

## Abandonment of Missisquoi During American Revolution

The last period in the description of Abenaki movements in the eighteenth century is that of 1775-1800, marked by the American Revolution. Most scholars who have written about the Abenakis of Missisquoi state that they withdrew from Vermont during the American Revolution (Calloway 1990b:224, Haviland & Power 1994:241, Day 1981b:57, 65; 1973:55, Perry 1863:202-03, Barney 1882:1000).

The big question is whether a significant number of Abenakis stayed behind at Missisquoi when the bulk of the village moved. This is interwoven with the question of how many Abenakis lived at Missisquoi at the start of this period. The petitioner's use of inflated figures bolsters its argument that large numbers of Abenakis remained at Missisquoi after the Revolution (Petition:43-44, 51; Petition Addendum:316). The petition claims there were at least 1,000 Abenakis in the area in 1775 (Petition:44). Professor Dickinson sees no evidence of such large numbers and places the figure at no more than 500 (Dickinson Affidavit, Attachment B, 6).

So how many Abenakis were at Missisquoi in the 1790's? The petition makes the exaggerated claim that there were at least 1,000 Abenakis centered in Northwestern Vermont from 1790 to 1860 (Petition Addendum:xiv). Abenaki tradition, as reported by Moody, says 50 wigwams (or 250 people) still remained in Swanton in 1790, but both Calloway and Day suspected this figure was too high (Calloway 1990a:220, Day 1981b:57). Another account suggested 70 Indians in Swanton in 1793 (Day 1981b:57). Moody argued that a substantial Indian population remained at Missisquoi, citing a 1779 map that shows an "Indian castle." However, Day disputed this: "in view of the well known tendency of cartographers to reproduce older information, we cannot take this as good evidence for an Indian population

there in 1779” (Day 1981b:55). Day said there were only about 20 Indians left at Missisquoi by 1786-1788 (Day 1981b:56).

Petitioner actually concedes that “the village at Missisquoi was abandoned,” between 1794 and 1800. However, it argues that the Indian habitation continued inconspicuously (Petition, 49-50). This is the Abenaki justification for the lack of evidence of an Abenaki community in Swanton and the rest of the Missisquoi region for the following 200 years (Petition Addendum:307, 319-20). In sum, because the evidence indicates a shrinking Indian population at Missisquoi from 1776 to 1800, petitioner relies on claims of Abenaki invisibility as protection (Petition:148-50, 154). Faced with the fact that the village was abandoned, petitioner argues that the infrequent and occasional references to bands of traveling Abenakis are indications that there were actually hundreds more living in the area. On the contrary, it is more likely that these sporadic sightings were recorded precisely because they were unusual. Those travelers may actually have been visitors who no longer resided at Missisquoi.

With this overview in mind, an examination of the evidence and argument put forth by petitioner is in order. Petitioner’s suggestion that only a dozen families moved to Odanak between 1775 and 1800 is misleading (Petition:51). The petitioner’s suggestion seems to be a misreading of Day’s observation that twelve family names at Odanak/St. Francis are traceable to Missisquoi (Day 1981b:56).<sup>19</sup> Day concluded that nearly fifty years after the American Revolution, there was clear evidence that the St. Francis Abenaki could be traced back to Missisquoi. Day’s ethnographic and linguistic studies of Odanak/St. Francis further

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<sup>19</sup>“[T]here are at least a dozen recognizable Missisquoi family names in the 1829 census of Saint Francis, and it seems reasonable to assume that many of them came in the early years of the war.”

demonstrate that the roots of the twentieth-century Abenakis of Odanak/St. Francis lie at Missisquoi (Day 1971:120-22).

In addition to retreating to Odanak/St. Francis, some Missisquoi Abenakis may have gone to the upper Connecticut River valley, to Lake Memphremagog, or to Clarenceville, Quebec<sup>20</sup> (Calloway 1990a:75-76, 1990b:230-31, Haviland & Power 1994:241, Day 1981b:56). However, these were not permanent locations for the Abenakis either (Calloway 1990b:231-33). In 1798, a group of Abenakis offered to sell their land at Indian Stream in northern New Hampshire to that state. The offer was rejected by the legislature but the land was sold to individual purchasers (Charland 1964:176, n.85). “The Bedel deed<sup>21</sup> in New Hampshire and other land sales in the late 1790’s indicated that many of the bands from northern Vermont and New Hampshire had removed to St. Francis by that time” (Calloway 1986:220). Large game had become scarce in northern Vermont and New Hampshire by this time, so the Indians moved northward (Calloway 1990b:231, Barry 1999:28).

The petitioner’s reliance on baptismal records of Indians in Chambly, Quebec, between 1775 and 1785 to confirm that Abenakis continued to live at Missisquoi is not dispositive (Petition:46). As Day pointed out, it is quite possible these were transients, not local residents (Day 1981b:55). Moreover, they could have been Abenakis living at Clarence, Quebec, not at Missisquoi (Day 1981b:55; *see also* Dickinson Affidavit, Attachment B, 6). Day concluded that

[t]he numbers [sic] of Indians at Missisquoi after the Revolution appears to have been rather small....This small number compared with the earlier

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<sup>20</sup> The idea of an Indian community at Clarenceville was floated by John Moody. However, he wrote that further work was “needed...to confirm the community’s existence” (Moody 1979:46).

<sup>21</sup> The land conveyed by the Bedel deed is located in northern New Hampshire and an area in Vermont east of Lake Memphremagog. The signatories of the deed are not known to be Missisquoi Abenakis; rather they are Cowasucks (Calloway 1990b:231, Day, 1981b:69).

populations suggests that withdrawal from Missisquoi in the early years of the Revolution did indeed remove many families permanently to some other location. The most probable place of removal is Saint Francis. (Day 1981b:56)

Reports of Indians at Missisquoi after the American Revolution are infrequent. One of the first Americans to survey the Indians was Thomas Jefferson. He compiled two lists in 1782 from available sources of his day. These were entitled “Indians Northward and Westward of the United States” and “Indians Within the Limits of the United States” and were published in his *Notes on the State of Virginia* (Jefferson 1782:229, 230-32). He drew primarily on sources from 1758 to 1779. Jefferson sought to “state the nations and numbers of the aborigines which still exist in a respectable and independent form” (Jefferson 1782:227). He did not identify any Abenakis in the area of Vermont. He located them only north of the U.S. near Trois Rivières, Quebec (Jefferson 1782:229).

There are instances of sightings of Indians at Missisquoi after 1775.<sup>22</sup> One incident occurred in 1784, after James Hunter and Charles Grajon attempted to claim lands through title from James Robertson—the one who leased the lands from the Abenakis in 1765 for 91 years. This is recounted by Charland as follows:<sup>23</sup> Ira Allen had settled other families on that land and refused to recognize the lease, saying the Indians lost their title when the British defeated the French in 1763. Hunter, upset over his inability to remove the families on the land, warned that the Abenakis would return and claim their rights by force. Thereafter, a group of St. Francis Abenakis appeared at the mouth of the Missisquoi and made threats.

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<sup>22</sup> Other sightings are traceable to Caughnawagha Indians, not Missisquois (Day 1981b:57).

<sup>23</sup> For an English retelling of Charland’s account, see Calloway’s *Western Abenakis of Vermont*. (Calloway 1990b:225-29).

Allen appealed to General Haldimand saying he had no objection to the Abenakis asserting claims but believed they had been incited by Hunter and his accomplices at St. Jean.<sup>24</sup> Haldimand attempted to calm Allen and instructed his officers to investigate Hunter. Charland 172-74. The fact that Allen attempted to settle the problem through correspondence with the Quebec Governor indicates that the Abenakis were within the control of the Canadian authorities. Haldimand's investigation of the incidents in St. Jean, Quebec, also confirms that the Abenakis were using Canada as a home base from which to accost the American settlers. Allen's request of aid in this matter from a foreign power, indicates that the Indians were not *local* residents of the Missisquoi area.

The next reported incident was in 1787 and 1788 when twenty Indians appeared in Swanton and demanded rent from farmers Waggoner and Tichout. These Indians raised a British flag upon setting up camp; an indication they had come from Canada—most likely from Odanak/St. Francis (Day 1981b:56, Calloway 1990b:228, Barney 1882:999). Again, the Quebec officials attempted to resolve the dispute by arranging a meeting between the Abenakis and the American settlers. The Abenakis did not succeed in removing the settlers. Day observed that the Abenakis came to realize they had lost control of these lands at Missisquoi by this time (Day 1981b:60).

Shortly thereafter, in 1789, the Abenakis petitioned the Governor of Quebec “to indemnify them for the loss of their lands on the Missisquoi River” (Day 1981b:60; Charland 1964:175-76). They renewed their request in 1797 and 1803. The British governor in Canada finally approved their request and issued the Durham grants to the Abenakis in

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<sup>24</sup> St. Jean is located on the Richelieu River, southeast of Montreal. It was the site of a fort in the eighteenth century where many loyalists went after the American Revolution (Canadian Encyclopedia:1985b; see Map at page vi of this Response).

1805<sup>25</sup> (Charland 1964:76). The final granting of this petition may also be attributed to the overcrowding of Odanak/St. Francis at that time (Haviland & Power:245, Day 1973:55). The population of Odanak/St. Francis had grown significantly after the American Revolution—again confirming the migration of Abenakis from Missisquoi to St. Francis (Day 1981b:56, 61).

John B. Perry's history of Swanton, written in 1863 also maintains that, of the Indians at Missisquoi, "most withdrew to Canada, between the close of the Revolution & 1790" (Perry 1863:203, Clifford 2001:223). While he noted that "a few still lingered on the Missisquoi" at that time, he reported that "[t]hey had, to a large extent, retired to St. Francis" (Perry 1863:240). He went on to note that

The village of St. Francis having become the principal center of the few who survived, the tendency was in that direction. Consequently one family after another withdrew from Vermont, & only returned to Swanton, for a few weeks or months each year, to engage in hunting & fishing. (Perry 1863: 241).

A bit further on he wrote that "they continued to leave the place, a few at a time, until 1798, when all that remained took their departure. Since that year, they have only returned in small parties, at long intervals, to remain for short seasons" (Perry 1863:241-42).

Confirming this view of Odanak/St. Francis as their center, Calloway wrote that in 1800, Odanak/St. Francis was the location where "the exiles coalesced into a new community in St. Francis and reassembled the last vestiges of Abenaki political power in the northeast" (Calloway 1986:221). St. Francis became the melting pot for Northeast Indians. The last of the large groups to arrive there were the Abenakis of Missisquoi (Day 1971:119). And, as

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<sup>25</sup> The members of the Durham reserve were re-absorbed into Odanak/St. Francis in the 1830's (Day 1981b:61).

Day concluded, it is at Odanak/St. Francis that the culture and language of Missisquoi survived—not in Vermont (Day 1973:56).

## NINETEENTH CENTURY

### **The Insubstantial Evidence of Continued Tribal Presence in the Nineteenth Century**

While the early historic period of the eighteenth century has been described as lacking material on the western Abenakis, the nineteenth and twentieth centuries are even more spotty. Faced with an almost total lack of evidence of any continued Abenaki presence in northwestern Vermont after 1800, the petitioner has constructed a speculative argument to explain this away. It contends that the Abenakis adopted a strategy of blending in with the community, in order to avoid discrimination and ill treatment in the face of adversity (Petition:145, 148-50, 154). The problem is, they blended in so well that they do not show up in the records as a tribal entity until nearly two hundred years later—in 1976.

Petitioner lists only a few sightings and reports of Abenakis in the Missisquoi region between 1800 and 1900. Almost every one of petitioner's reports evaporates upon close examination. Many are either open to alternative interpretations or are unverifiable. Most have no proven connection to the Missisquoi region in northwestern Vermont.

The petitioner's evidence of an Abenaki presence in Vermont in the nineteenth century amounts to the following:

1. a story about Madam Campo waiting for visitors at her home (Petition:54);
2. references to Indians in local histories (Petition:54-56);
3. an account of Indians in Rutland, Vermont, in an 1820 Burlington Free Press article (Petition:56);

4. records of baptisms in Chambly, Quebec, in the early 1800's (Petition:58-59);
5. federal census records (Petition:61-66);
6. a local history reporting that bands of eight to ten families drifted back for part of the year as late as 1835 or 1840 (Petition:71);
7. a record of an 1814 marriage at Caughnawagha to a "sauvage abenaquis d'un village d'amerique" (Petition Addendum:307);
8. an 1835 article in the Green Mountain Democrat regarding Indians from the eastern shore of Lake Champlain camping at Windsor, Vt., on the Connecticut River (Petition Addendum:308); and
9. a letter from Father Petithomme in 1835 reporting that he sleeps in the cabins of the Indians on Lake Champlain (Petition Addendum:312-13).

The first item offered in support of the continued presence of Abenakis at Missisquoi is the story of Madam Campo awaiting a visitor at her home (Petition:54). Petitioner uses this as an indication that there were other Indians in the vicinity who were calling upon Madam Campo. This appears to be a misreading of the quotation. The woman is described as "the sole representative of her tribe," and she was "hopeful that the lands of her fathers would be restored to her." Her costume and behavior are described at a time "when she anticipated a business call from the possessor of her assumed heritage." While petitioner claims she awaited other Indian visitors, Professor Dickinson interprets this quite differently. He says a proper reading of this passage indicates that

she expected a visit from the white person who occupied the land she claimed to settle her case. The words "possessor of her assumed heritage" indicates that she awaited the person [who] occupied an inheritance that she assumed was hers. (Dickinson Affidavit, Attachment B:6).

The second piece of evidence cited by petitioner in support of nineteenth century Abenaki presence is a group of citations from local histories written in the 1870's. These descriptions of Indians have two features: (1) they do not name the Indians as Missisquoi Abenakis, leaving them as generic Indians, or as St. Francis Indians from Canada, and (2) they speak of them as seasonal hunters, not as residents. The last one in particular, referring to Indians seen in Richford, concerns "hunting along the Missisquoi River and mountains in winter...[and] pass[ing] down the river into Lake Champlain and the Sorel River to Caughnawagha to market" (Petition:55). From these geographic clues, Professor Dickinson concluded that this passage does not refer to Abenaki Indians:

The final citation [on page 55 of the petition] clearly refers to Mohawks who also had claim to the Lake Champlain area. Traveling and hunting expeditions were part of both Abenaki and Mohawk lifestyles and this does not seem to demonstrate much except that Natives were still hunting in the area. (Dickinson Affidavit, Attachment B:7).

The 1820 Burlington Free Press article, the petitioner's third piece of evidence, does not substantiate the argument that Missisquoi Abenakis were a consistent presence in the northwestern part of the state (Petition:56). The article describes a family of nine Indians who camped near Rutland for the winter. As the Missisquoi Abenakis' general approach was to retreat northward to Canada or eastward toward Lake Memphremagog, it is unlikely that these Indians near Rutland came from the group that had previously been in Missisquoi near Swanton. Indeed, Rutland is over 100 miles south of Swanton. Moreover, there is evidence of other Indians in that area—namely, the Mahicans from Schaghticoke (Ulrich 2001:347-48, attributing basket lined with 1821 *Rutland Herald* newspaper to Mahicans at Scaticoke). It is at least as likely that Indians in the Rutland area were from New York State, since we know

there were Indians documented in federal census records around Lake George, New York, during the nineteenth century (U.S. Bureau of the Census 1900a, 1900b).<sup>26</sup>

Baptisms in Canadian parishes, such as Chambly, are the fourth type of evidence of Abenaki continuity cited in the petition (Petition:58-59). However, the existence of these records does not necessarily confirm that Abenaki continued to live in the Missisquoi region of Vermont. As petitioner itself contends, some Abenakis left Missisquoi and went to Clarenceville, Quebec. The individuals who used the Catholic parishes whose records are cited here could have been residents of Clarenceville, not Vermont (Petition:59). *See* Map above, p.vi.

The families could also have used these parishes as they were traveling from Missisquoi to Odanak/St. Francis. The baptism of a child of Antoine Portneuf could be explained that way, rather than as proof of Missisquoi residence. The Portneuf family shows up in all the Odanak/St. Francis censuses from 1829 through 1875 (Day 1981b:93). There is even an A. Portneuf on the list of Veterans of the War of 1812, who could be the Antoine Portneuf who took a child to be baptized at Chambly in 1800 (Day 1981b:72).

Furthermore, the baptisms cited by the petitioner are not conclusively Abenaki baptisms. The petitioner relies on the “lack of a first or last name, as well as the sound of Wabisan, and the residence being simply on the river” to conclude that the baptism of Marie Appolinaire Wabisan is an Abenaki baptism (Petition:59). However, the parents’ residence on the river is near Fort St. Jean, Quebec, not Vermont. In addition, the father’s occupation

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<sup>26</sup> Rutland, Vt., is about 100 miles south of Swanton, Vt., but only 40 miles north of Lake George in Warren County, N.Y. (*see* Map above, p. vi).

is given as “day laborer,” an occupation that does not immediately suggest Indian (Petition:59). Were he described as an Indian hunter, one might conclude otherwise.

The fifth category of evidence upon which the petitioner relies is federal census records (Petition:61-66). A more detailed examination of these records is presented in the section analyzing the genealogical evidence, *Criterion (e)—Descent From Historic Tribe*, but a few comments are appropriate here. First, the petitioner itself acknowledges that these people were not identified as Indian in the census. In addition, the petitioner makes grand assumptions based on similarities of names to support its conclusions. For example, it assumes that Canance is Annance, Mowen is Morin, Kady is Kedzi, Benway is Benedict, Legur is Lazare, etc. Without birth, marriage, or death records that show the connections between these particular individuals and descendants bearing the transformed names, these assumption are not justified.

Moreover, even the petitioner’s evidence points to other conclusions that undermine the assertion that the Abenakis maintained a continuous presence at Missisquoi. The fact that the names listed in one decade are all gone in the following decade undercuts the argument of continuity. Also, the connection between names on the censuses and family names at Odanak/St. Francis confirms the primacy of Odanak/St. Francis as an Indian center from which individuals occasionally traveled to Vermont.

Lastly, this census list’s inclusion of Francis Benway of Milton on the grounds that “Benways would marry with Abenakis in Grand Isle County,” indicates a fundamental mistake in the petitioner’s approach. Non-Indian ancestors of current tribal members are not transformed into Indians because later generations married Abenakis. The presence of these

white relatives in the records cannot be used as justification for the existence of a continuous Indian community in Missisquoi.

The sixth piece of evidence relied upon by the petitioner in its argument that Abenakis continued to live in Missisquoi in the nineteenth century is Lewis Cass Aldrich's *History of Franklin and Grand Isle Counties*, in which he reported that bands of eight to ten families drifted back "to favorite camping grounds to spend part of the year, up to as late as 1835 or 1840" (Petition:71, quoting Aldrich 1891:28). By its very wording, this statement describes temporary visiting, not continued residence. These could have been hunting parties making seasonal forays from a home base in Quebec.

To understand why these visits stopped in the 1830's, some context is appropriate. The petition itself provides some of this. The petitioner reports that the Abenakis shifted their hunting trips northward in the 1830's (Petition:69, n. 17). This may explain why the hunting parties were no longer noticed in Vermont after the mid-1830's. This is consistent with other evidence that the influx of settlers to northern Vermont and southern Quebec interfered with traditional Indian hunting practices. The 1830's were a time of French-Canadian movement within Quebec and into the United States. It was all part of the pressure built up by surplus population, searching for land and work for the younger sons of large families (Hunter 1939:35-36).

The record of an 1814 marriage at Caughnawagha to a "sauvage abenaquis d'un village d'amerique" is the seventh item cited by the petitioner for proof that an Abenaki village continued to exist at Missisquoi (Petition Addendum:307). But, the proof falls short; the reference does not name the village. It could have been a village around Lake Memphremagog, on Lake George, New York, in New Hampshire, or in Maine. There is

evidence of Abenakis living in all those areas around that time. The petitioner's assumption that the reference is to Missisquoi is speculative.

The eighth piece of evidence cited by the petitioners is probably the strongest, but it too presents difficulties. The 1835 article in the *Green Mountain Democrat* is the only item cited by petitioner that identifies Indians as “Missisiques, who live a wandering life on the eastern shore of Lake Champlain” (Petition Addendum:308-9, *Green Mountain Democrat* 4/3/1835). However, “the novelty of such a scene”—Indians in tents camping in Windsor, Vt., on the Connecticut River—is the reason it was reported in the newspaper (*Green Mountain Democrat* 4/3/1835). Even this citation includes some ambiguity, since the family is described as “wandering,” rather than settled in a village of Indians at Missisquoi. Furthermore, the family subsists through the “manufacture of Indian articles” (*Green Mountain Democrat* 4/3/1835). Ulrich's assessment of this news story led her to conclude that the family's success in selling “Indian articles” depended on their ability to “acknowledge and even flaunt, difference” (Ulrich 2001:347). This does not match the portrait of Indians put forth by petitioner—Indians hiding their identity in order to survive. This family did not blend in with the nineteenth century white residents; instead it retained a separate culture. Thus, this one sighting cannot substantiate the presence of a large community of Abenakis, hiding their identity, living incognito, in Franklin County. This one family, traveling and selling Indian articles is insufficient to establish continuous habitation by a community of Abenaki Indians at Missisquoi throughout the nineteenth century.

The last piece of evidence offered by the petitioner in support of its argument is a letter from Father Amable Petithomme in 1835 (Petition Addendum:312-13). The petitioner describes the letter as follows:

In a letter to his superior in France dated 7/28/1835, Father Petithomme went on at some length about the habits of various clerics vis a vis the Catholics he served, and added for emphasis that "...I sleep in the poor cabins of the Indians" when traveling along the eastern shore of Lake Champlain. (Petition Addendum:312).<sup>27</sup>

The only problem with this is that the wording of the letter is totally unverifiable. No copy of it has been provided to the BIA with the petitioner's papers, and contacts with the Archives of Sacred Hearts Congregation in Rome have ascertained that the letter is missing from their files.<sup>28</sup>

Additionally, the lack of specificity in the portion of the letter quoted by the petitioner introduces a strong element of doubt. The quoted portion does not say where the "poor cabins of the Indians" are located. If their location was not given in the letter and has been filled in by conjecture on the part of petitioner, then the evidence is ambiguous and weaker than might first appear. The biography of Petithomme by R.P. Mouly quotes a part of that July 28, 1835, letter, and then goes on to talk of his travels up and down Lake Champlain and the surrounding area (Mouly 1960:44). The portion of Petithomme's letter quoted by Mouly states that this is "une vie difficile et qu'il loge habituellement dans des cabanes;" that is, a difficult life and that he usually finds lodging in huts (Mouly 1960:44). The reference does not indicate the location of this lodging, and does not say these are Indian huts. If this is the

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<sup>27</sup> The petition cites the source of the letter as follows: From the Archives of the Sacred Heart of Jesus and Mary, the Vatican, Rome, Italy.

<sup>28</sup> See email from Father Leopold de Reyes, General SS. CC. Archivist, at the Sacred Hearts Congregation in Rome, to Interlibrary Loan Librarian Meg Page at the Vermont Department of Libraries, March 8, 2001 (de Reyes 3/8/2001). Colin Calloway referred to the letter in *The Western Abenakis of Vermont*, but appears not to have seen it himself either, since he notes its source with the following qualification: "cited in *Petition Addendum*, pt. B, 313" (Calloway 1990b:241 & 298, n.7).

same passage cited by petitioner, then it is merely supposition that the huts belonged to Indians on Lake Champlain.<sup>29</sup>

From this critique, the weakness of the petitioner's evidence of continued Abenaki presence is apparent. The sightings of Indians in the state are rare, because they no longer lived here as a community in any real sense. Those that were here were purposely visible, making use of their differences for economic gains. Others who may have had some Indian ancestry, but chose to assimilate into the white culture, were no longer identified by outsiders as Indian because they no longer lived in an Indian community.

### **Comments on Recent Scholarship**

With such feeble evidence of continued Abenaki presence in the Missisquoi region, it seems surprising that recent scholarly works have repeated the blanket statement that the Abenakis maintained their connections to the area throughout the nineteenth century. However, closer examination of these works reveals that they all rely on the petition, or its primary author, John Moody, for support. He was hired by the Abenaki Tribal Council in February 1978 to conduct research to find support for the petition, and worked with Abenaki assistants in 1978 and 1979 carrying out that research (Petition:128, 153). Moody once described himself and his connection to petitioner thus:

I am a student of Native American studies at Dartmouth and a Vermonter searching out my roots and ancestry. For the past two months I've been working on a narrative history of the Wabanaki peoples who lived and still live in Vermont, New Hampshire, and Quebec. My intent is to fill an expressed gap in the Native American history of this area... There are presently some people working on reconstituting Abenaki identity in Northern Vermont who are interested in my work. (Moody 4/24/1976).

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<sup>29</sup> See additional discussion of Father Petithomme below in the section *Swanton Church is French Canadian, not Indian*.

He developed strong ties to the petitioner, even giving the eulogy at the funeral of Chief Homer St. Francis (*Burlington Free Press* 7/12/2001). Since Moody has been working for the petitioner and relies heavily on family assumptions and declarations of Indian heritage in the recurrent absence of documentary proof of Indian ancestry, then his work is merely self-identification. Such self-identification, without proof through external sources, is insufficient under the federal criteria for tribal acknowledgment (59 Fed. Reg. 9280, 9286, BIA MaChris Lower Alabama Creek Indian Tribe 1987:5, 32-35).

Colin Calloway has made clear that many of his publications on the Abenakis were motivated by a desire to assist them in obtaining federal acknowledgment. In “Green Mountain Diaspora: Indian Population Movements in Vermont, c. 1600-1800,” in 1986, he wrote:

Dispersed in small groups, the Indians ceased to be visible as “tribes” in the eyes of Euro-Americans. The strategy of survival through anonymity worked too well. Generations of movement, withdrawal, and maintaining a low profile enabled Vermont’s Abenakis to survive in calamitous times, but left their twentieth century descendants with considerable problems when they sought to convince a skeptical United States government of their true identity and continued historic presence. (Calloway 1986:222.)

This was Calloway’s first article on the Western Abenakis. He reveals something of John Moody’s influence when he gives credit to a fellowship award from the Vermont Historical Society that made the article possible, and then states, “The author is indebted to John Moody of Sharon, Vermont, for his help throughout the project and for his careful reading of the manuscript” (Calloway 1986:197).

John Moody’s influence is abundant in Calloway’s article. While the article discusses various Indian groups—Sokoki, Schaghticoke, and Cowasuck—almost the entire section on the Missisquoi comes from Moody. The idea that Missisquoi was a focal

community for Indians in the Lake Champlain Valley around 1770 is Moody's (Calloway 1986:219, n. 70). The notion that the white settlers "saw merely the tips of 'front persons' of a mobile Indian community" is Moody's (Calloway 1986:220, n. 74). And the entire story of "the continuing presence of Abenaki families around St. Albans, the Islands, Swanton, and Highgate," who "survived by going underground in marginal areas," is attributed to Moody (Calloway 1986:220).

Around the same time that Calloway completed his first article on the Western Abenakis, he wrote to Gordon Day, commenting:

John Moody is keeping me well supplied with information, encouragement and suggestions for present and future research and writing. (Calloway 2/20/1985).

Four years after the publication of the "Green Mountain Diaspora," Calloway published *Western Abenakis of Vermont 1600-1800*. He dedicated the book to his wife and to John Moody, revealing the extent of Moody's influence upon him:

John Moody took an early interest in the project, selflessly shared knowledge and notions with me, and constantly encouraged my endeavors even as he reminded me that there were larger issues than the book at stake here. Without these two friends [Marcia Calloway and John Moody], this book would not have been written, so it is fitting that they share the dedication (Calloway 1990b:xx-xxi).

Those "larger issues" are undoubtedly federal tribal recognition. The references in *Western Abenakis* to Moody's unpublished manuscript throughout chapters 10, 12, and 13 are prevalent (Calloway 1990b:288-91, n. 16, 19, 20, 23, 33, 34; 295-97, n. 3, 12, 13, 18, 27, 31; and 297-98, n. 12, 14). Most of chapter 13 of this work is based directly on the petition for federal acknowledgment submitted by the St. Francis/Sokoki Band of the Abenaki Nation of Vermont. (Calloway 1990b:297-98, n. 2, 5, 7, 22, 24 giving citations to Petition). Moody himself claimed a large role in assisting Calloway when he wrote to Gordon Day,

Colin Calloway's new book is nearing completion and my re-writing/editing same with him has generated a number of useful ideas to pursue! (Moody 7/17/1988).

Of course all historians weave stories built in part on historic fact and in part on hypotheses to fill in the gaps. However, one must not confuse the facts with the speculative interstices. For example, the fact that Henry Tufts lived in the eighteenth-century with the Indians around Bethel, Maine, and traveled with them to meet members of their tribe as far west as Lake Memphremagog, does not substantiate the claim that there was a thriving village at Missisquoi at the same time, as Calloway suggests. (Calloway 1990b:201-02). *See* Map above, p.vi. Indeed, the fact that Tufts never once mentions the Missisquoi or anything about Lake Champlain, could mean that there was no significant entity there at that time (Tufts 1807).

In another section of his book, Calloway sets forth the thesis of the Petition as if it were historical fact, yet he does not cite any historical evidence to support it:

In the view of most of the white community, the western Abenakis seemed to have "disappeared" from Vermont by 1800. But large numbers stayed, living in family bands and off the land as they had for centuries by hunting, fishing, and gathering. Usually poor, often intermarried and French-speaking, these people came to live a nomadic existence, and they cropped up in local records as "gypsies," wandering vagrants who appeared on the edges of white communities. (Calloway 1990b:234-35).

There is no verification that the people described as "gypsies" were Indians, let alone the Abenakis of Missisquoi. Repeatedly saying it does not make it so. The fact that a group of people today has, as Calloway says, "reconstituted" itself into the Sokoki-St. Francis Band of the Abenaki Nation does not mean that the historic Missisquoi really stayed here in large numbers and survived as an Indian entity for 200 years without notice. (*See* Calloway 1990b:xvi).

William Haviland and Marjory Power first wrote their book *The Original Vermonters* in 1981 in which they traced native peoples in Vermont from Paleoindians to the present through archeological and historical means. This was before the Abenaki submitted their petition for federal acknowledgment. When Haviland and Power revised the book in 1994, they included material from new archeological finds, as well as information provided to them by the Abenaki petitioner and John Moody:

Similarly, the continuing historic and ethnohistoric research of such scholars as Colin Calloway and John Moody has enriched our understanding of the last 400 years, especially the critical period after A.D. 1800. Finally, Vermont's contemporary Native American community has been active over the past thirteen years and more is known about them now than was the case before...not a single chapter of the book remains the same as in the earlier edition. (Haviland & Power 1994:xx).

Specifically they wrote in the endnotes to chapter 6 "European Takeover of Vermont," and chapter 7 "Survival and Renewal," that their "summary of post-1800 Abenaki history is drawn from Moody (1979:6-80), and the Addendum to the Abenaki petition for federal recognition" (Haviland & Power 1994:301). They also relied upon personal communications with John Moody, again showing his pervasive behind-the-scenes influence (Haviland & Power 1994:296-97).

It appears that the petitioner has made a concerted effort to encourage scholars to publish works in support of the petition. It even outlined a "recognition strategy" which includes "publications" as part of "the game" of obtaining recognition (Petitioner 2000). Historians of Native Americans, faced with forceful and determined arguments from Vermont Abenaki leaders must have been hard pressed to resist these new theories that allowed them to assuage their guilt over previous generations of Americans' mistreatment of Indians. But the BIA must sift through the rhetoric and discern the facts. It should not be

swayed by recent scholarship that itself relies on unsubstantiated claims in the original petition.

### **Countervailing Evidence that the Missisquoi Did Not Return to Vermont as a Tribe After 1800**

As pointed out above, the weight of the evidence cited by the petitioner in favor of its case for continuity of Missisquoi settlement and community is questionable given the ambiguities in the material and the amount of guessing necessary to interpret it. The speculative conclusions that the petitioner draws from the scarce evidence it cites must be viewed in context. There is a large body of evidence that indicates that during the nineteenth century there was no continual presence of any Indian tribe in the Missisquoi region, or elsewhere in northwestern Vermont. This evidence includes journals of travelers, surveys of Indians, town histories, and census records.

#### Travelers, Historians, and Surveyors of Indians

There were a number of travelers and contemporary historians who wrote about Vermont during the nineteenth century. Some of these individuals took a specific interest in Indians, whenever they encountered them. The fact that they never came across a community of Indians in northwestern Vermont along Lake Champlain is significant. One of the earliest of the journals is that of Edward Augustus Kendall relating his travels in northern New England during 1807, 1808, and 1809 (Kendall:1809). He devoted six chapters of the book to Vermont. He appeared to have more than a passing familiarity with the northwestern part of Vermont and the lake. He wrote of the beauty of the landscape between Burlington and St. Albans, having “passed this road more than once, both in summer and in winter,” and

indicated that he “had occasion to pass through this part of the country of Lake Champlain a second time, in the middle of the year 1808, and again in the beginning of that of 1809” (Kendall 1809:276, 293). Moreover, Kendall wrote that “[I]n June, 1808, I was two days upon the lake, making a circuitous voyage, between Saint-John’s, or Fort de Saint-Jean, [Quebec,] and Burlington” (Kendall 1809:293; *see* Map above, p.vi). He even traveled to “Swanton Falls, a cataract on the Michiscoui...[which] empties itself in a large bay, to which it gives its name” (Kendall 1809:276). Kendall wrote of meeting Indians at St. Francis, Quebec, and Indians in Maine, but made no mention of any in Vermont (Kendall 1809:66-69). He learned the meaning of Michiscoui,<sup>30</sup> from the Indians at St. Francis—not from any Indians in Vermont, apparently having encountered no Indians in Vermont.<sup>31</sup>

In 1822, Jedediah Morse was given the task of ascertaining the number of the various tribes in the United States for a government report. He compiled an extensive list and enumeration of Indians throughout the country entitled *Report to the Secretary of War of the United States on Indian Affairs, Comprising a Narrative of a Tour Performed in the Summer of 1820*. He found “Abenaquies” in Maine, but listed no Indians of any sort in Vermont (Morse 1822:67). His statistical table identified Indians in New England in enclaves as small as 40 “souls” (Morse 1866:361-74). Any group of Indians functioning and holding itself out as a tribe should have received notice, so it is significant that there was no mention of any Abenakis in Missisquoi, let alone elsewhere in Vermont.

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<sup>30</sup> He writes, “The word *Michiscoui* is of the Indian tongue, but of French orthography. By the English, it is sometimes, but illiterately, spelt *Missisque*” (Kendall 1809:276).

<sup>31</sup> He writes, “upon inquiry, of the Indians of Saint-François, both for the true name and signification, I found them agreed in calling the river *Miskiscoo*, *Miskiski*, for *Missi kiscoo*, which they interpret *abounding in waterfowl*” (Kendall 1809:276).

Samuel Drake, an avid student of “Indian History” undertook to “locate the various bands of Aborigines, ancient and modern, and to convey the best information respecting their numbers our multifarious sources will warrant” in his comprehensive survey of Indians published in 1845 called *The Book of the Indians; or, Biography and History of the Indians of North America, from its First Discovery to the Year 1841*. He was a sympathetic observer of Indians, taking pains in the Preface to his book to criticize the wrongs done to the Cherokees (Drake 1845:v). He identified the “Abenakies” as “over Maine until 1754, then went to Canada; 200 in 1689; 150 in 1780” (Drake 1845:v). In his detailed list of 465 Indian groups in the United States he included specific Abenaki groups such as the Penobscots, Marachites,<sup>32</sup> St. John’s,<sup>33</sup> and Wawenoks (Drake 1845:v-xii). He did not detect any Missisquois or Vermont Abenakis.

One of the foremost authorities on the Indians of the nineteenth century was H.R. Schoolcraft. His six-volume tome, *Historical and Statistical Information on the Indian Tribes of the United States* (1851-54), was prepared under the direction of the Bureau of Indian Affairs. It was an extensive study of the numbers, location, and status of Indians at the time. None of the tables in Schoolcraft’s work indicates the presence of Missisquois or Abenakis in Vermont. None of the references to the Abenakis located them around Lake Champlain in the mid-nineteenth century when he was writing. Instead, he described them as “[a] tribe of Indians formerly inhabiting the territory which now comprises a part of the States of Maine and New Hampshire” (Schoolcraft 1851-54:vol. III, 512). He wrote that the

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<sup>32</sup> This may be the Malacites.

<sup>33</sup> These Indians are described as living on the St. John’s River, which is in Maine. This is quite distant and should not be confused with the town and fort of St. Jean/St. John on the Richelieu River in Quebec.

Abenakis are now “seated at the village of St. Francis” in Quebec. He said the territory they inhabit is “situated on the south of the St. Lawrence, between the St. John’s of New Brunswick and the river Richelieu, Canada” (Schoolcraft 1851-54:vol. IV, 542). The only explanation for his failure to detect any Abenakis in Vermont must be the lack of any identifiable Indian community there at the time.

Schoolcraft was familiar with the region and had spent a considerable amount of time there. He was born not far from Vermont, in Albany County, New York, and he attended Middlebury College in western Vermont. He spent time at Trois Rivières, Montreal, and Caughnawagha learning the Mohawk language in the 1790’s. His interest in Indian culture was strong and sympathetic, and he was married to a Chippewa woman (Nichols 1954:152). If there was a large Abenaki community at Missisquoi at that time, as petitioner claims, then one would expect Schoolcraft to be aware of it, since he was very familiar with the surrounding areas.

In addition to these national surveys of Indians, there were histories of Vermont written in the nineteenth century which could be expected to at least mention the Abenakis if they were still functioning as a community. For example, Francis Smith Eastman’s *A History of Vermont, From its First Settlement to the Present Time*, published in 1828, stated that the original inhabitants of Vermont were the Coos Indians. He wrote about some of their cultural practices, but made no mention of the Missisquoi as a tribe indigenous to Vermont or continuing to live there (Eastman 1828:16-20). Eastman also recounted the claims made by the Caughnawagha Indians of Canada for land in Vermont in 1798. Again, he did not relate this to any Indians living in Vermont at the time of his writing (Eastman:78-79).

A few decades later, S. R. Hall wrote *The Geography and History of Vermont* (2<sup>nd</sup> ed. 1868) as a textbook for students. An entire lesson was devoted to the history of the Indians and their interactions with the white settlers from 1609 through 1761. In this section, Hall stated “the Iroquois owned the land in the west part of Vermont, and once had numerous habitations on the lake and on the rivers that flow into it. Indians from the Cossuck and St. Francis tribes frequented other parts, rather as hunting ground than as a place of permanent residence” (Hall 1868:100).

Training one’s eyes closer, on a local level, leads to Hamilton Child’s *Gazetteer and Business Directory of Franklin and Grand Isle Counties, Vt., for 1882-83*. Child included a short history of the “aboriginal occupancy” of these two counties in his book. He recognized the presence of Indians in Franklin County—the county in which one finds Swanton and the Missisquoi region—in the seventeenth and eighteenth centuries, but observed that they did not maintain settlements in more recent times. He wrote:

A branch of the Abenakis tribe were the aboriginal occupants of this section of the country; and, indeed, they lingered upon their rightful soil, at the mouth of the Lamoille river, and thence north along the Missisquoi bay, for a long time after the French and English had taken possession of the country to the north and south of them. . . . [I]n 1755, the northern parts of Lake Champlain were in the possession of the St. Francis tribe of Indians, who wintered there in large numbers and subsisted by hunting and fishing; and as late as the time of the Revolutionary war, a branch of this tribe had a village at Swanton, consisting of about fifty huts, with a church, Jesuit missionary, and had some land under cultivation. (Child 1883:38).

Going on to note the abundance of arrowheads found near Franklin pond, he wrote of many tribes having contact with the area:

neither this nor any other locality in the State seems to have been the Redman’s home; at least not with historic times. Vermont was rather a territory to which all laid claim, and was used in common as a hunting, fishing, and battle-ground, by the St. Francis tribe on the north, their principal settlement being at Montreal, or Hockhelaga, as it was then called; the

Narraganset on the east, with their principal settlement on the Merrimac river; the Pepuquoits on the south, inhabiting the northwestern part of Connecticut; and the Iroquois, or Mohawks, as they were commonly called, on the southwest, their principal settlement being at Schenectady, N.Y., on the Mohawk river. (Child 1883:38).

This narration demonstrates that the late nineteenth century observers discerned no contemporaneous Indian residents in Franklin or Grand Isle counties. There was no obvious community of Indians remaining there in the late nineteenth century.

Perry's history of Swanton included one contemporary illustration of the Indians. After stating several times that the Indians of Missisquoi had retreated to St. Francis, "their principal centre," he wrote in 1863 that "a few from time to time have been, & are still, in the habit of visiting their old home" (Perry 1863:240-42). During these visits, he described them "liv[ing] for the most part by making baskets, moccasins, and trinkets, by hunting and fishing, as well as by an indifferent cultivation of the soil" (Perry 1863:242). Thus Perry knew of Indians, but they were visitors. There was no continuous community inhabited by Indians in Swanton; rather there were Indians from Quebec who traveled through to sell their wares.

### Federal Census Enumerations

Besides the surveyors and historians who looked for Indians and wrote local histories, there were government officials examining the populace. Vermont has never conducted any censuses of its own,<sup>34</sup> but the federal census materials are broken down by state and county in compilations that analyze the data. The federal censuses from 1860 onward used the category "Indian" as a race in the enumerations. The census identified only 20 individuals as

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<sup>34</sup> The petition states that it drew on the state census for some material, but this is impossible (Second Addendum:6). There never has been any Vermont state census (Eichholz 1993:20-22).

Indian in Vermont that year, and none were in Franklin County (U.S. Bureau of Census 1864:493). The enumerations for the following three federal censuses were similar. There were fourteen, eleven, and thirty-four individuals identified as Indian in the respective censuses of 1870, 1880, and 1890 (U.S. Bureau of Census 1872:68, 1901:561, Table 19).

Table 1: Summary of Indian Population in Vermont as Shown in Federal Census Reports

COUNTY	1860	1870	1880	1890	1900	1910	1920	1930	1940	1950	1960	1970	1980	1990
Addison				1		3		1			3	3	29	74
Bennington						4					2	9	38	53
Caledonia							2	1				7	16	99
Chittenden	20			8		9	4	6		8	9	46	156	286
Essex		3		13	3							3	7	18
Franklin						5		3			1	9	422	584
Grand Isle		6										1	25	23
Lamoille		5									2	14	15	46
Orange								10				5	29	64
Orleans				1			1	1			3	5	22	55
Rutland					1	1	8	9			3	26	59	60
Washington				3	1						2	26	62	104
Windham							5				15	36	37	67
Windsor				8		1	4	5			17	39	67	117
Other						3*				22 <sup>+</sup>				
Foreign Born <sup>++</sup>			6		1	11	8	6	4					
STATE TOTAL	20	14	11 <sup>‡</sup>	34	5	26	24	36	16 <sup>†</sup>	30	57	229	984	1650

Sources: U.S. Bureau of Census 1864, 1872, 1894, 1901, 1922, 1932, 1943, 1952, 1961, 1973, 1982, 1992.

\* For 1910 census, this figure is for counties other than Addison, Bennington, Caledonia, Chittenden, Franklin, Orleans, Rutland, Windham, or Windsor.

<sup>+</sup> For 1950 census, this figure is for counties other than Chittenden.

<sup>++</sup> Foreign born figures are not available for all years. When given, they are included in the figures for counties, not in addition to them.

<sup>‡</sup> For 1880 census, no county breakdown is available.

<sup>†</sup> For 1940 census, no county breakdown is available.

The CD-ROM indexes for the 1870 and 1880 censuses disclose the names of the families classified as Indian. The Indian families on the 1870 census include two New Jersey families—the Jacksons. The others are listed as having emigrated from Canada—indicating they are not long-standing Vermont residents. Moreover, none of these families is listed as living in Franklin County, the area of the petitioner’s supposed traditional home (U.S. Bureau of the Census, Family Quest 1870).

The 1880 census gives similar information. It shows four families of Indians—Jackson, Emory, Koska and Bomsawin. Only one of the heads of families was born in Vermont—the others are immigrants from Canada, Massachusetts, or New Jersey. Two of the families lived well south of Missisquoi—in Rutland and Addison Counties. The Jackson family, shown living in Essex County, was from New Jersey, and is not a native Vermont family. The last one is the Obomsawin family—a well-known name in the records of Odanak/St. Francis. The Obomsawins maintained continuous contact with and membership in the Odanak Reserve. None of the families listed in the 1880 census appears on the genealogical charts submitted by the petitioner.<sup>35</sup> See discussion in section on *Criterion (e)—Descent From Historic Tribe*.

The 1890 census was the first of three federal censuses to specifically seek out Indians and enumerate them on special forms. In Vermont, this census listed 34 Indians. Although the individual listings of the 1890 census were destroyed in a fire, a compilation summarizing the results of the Indian census survived. This compilation shows the counties

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<sup>35</sup>The two members of the Obomsawin extended family shown on the 1880 census are William and Mary Obomsawin. They are *not* included in the petitioner’s Family Descendancy Charts. The only Obomsawin alive in 1880 who is included on those genealogical charts is Simon Obomsawin. Simon reportedly came to Vermont in the early twentieth century (Huden 1955).

in which those 34 Indians lived; none lived in Franklin County. It disclosed thirteen Indians in Essex County, quite likely the Jackson family, which showed up there in the previous census. It also listed eight in Chittenden County, eight in Windsor County—in the southeastern region of Vermont—and five others scattered around the state. However, no Indians were uncovered in Franklin County (U.S. Bureau of the Census 1894:602).

These census materials are consistent with the observations of the local historians and surveyors who reported no Indian communities in Vermont after 1800. The lack of any significant numbers of Indians in the federal censuses confirms the views of those local reporters that the Indians they saw were travelers visiting the state.

#### Sightings of Indian Visitors and the Basket Trade

So what is the explanation for these traveling Indians who were sighted in Vermont? The trade in baskets provides one answer. The St. Francis Abenakis, like Indians from other tribes, made woodsplint baskets in the winter and sold them to whites in the summer. The tradition of making twined bags for carrying things was an older aboriginal custom. The practice of making splint baskets to sell to whites was more recent, spreading from the Indians of the Delaware Valley northward in the eighteenth century (Brasser 1975:8, 20-21). When the Indians no longer were able to rely on fur trading for subsistence, they turned to making and selling baskets (Brasser 1975:18, 28). The earliest known trade in baskets in Vermont is from 1799, when a group of starving Indians from Odanak/St. Francis came down the Missisquoi to Troy, Vermont (Brasser 1975:21, 27, Sumner 1860:22, 26). The only other evidence of an early nineteenth century Indian basket made for whites is from the

1820's: a Mahican basket lined with pages from the Vermont newspaper the Rutland Herald (Ulrich 2001:352).

A few local reports of traveling families of Indians loaded with basketmaking supplies confirm that the families seen in Vermont were part of the Canadian Indian basketmakers. One such account comes from the journal of Edwin H. Burlingame, an instructor at the Barre Academy in Barre, Vermont. He wrote of this encounter in his diary in October 1853:

Towards night Moore and myself walked about a mile above the village to an encampment of Indians who have been stopping here for a few days. We found them with their tents pitched near the river, a couple of distinct tribes, one from St. Francis in Canada, and the other from Maine. The tents were of white cotton cloth in the triangular shape and large enough to hold four or five persons comfortably. They were filled up with basket stuff and material for bows and arrows. The basket stuff was in strips, some of them dyed blue, yellow, and red, while heaps of finished baskets of all shapes and sizes were piled up in the middle. (Burlingame 1853:16).

Another similar reference to Abenakis traveling down the Connecticut River to sell their wares appears in the *History of Barnet, Vermont* written in 1923:

Yet within the recollection of many who are still living, small bands of the Abenakis Indians came down the river in birchbark canoes in summer during several years. Men, women and children built wigwams in true Indian fashion, covered with bark and the skins of wild animals, bringing with them baskets and other trinkets which they had made during the winter. The men spent most of their time in fishing and hunting, while the women sold their wares from house to house. Such a company visited Newbury as late as 1857. (Wells 1923:4).<sup>36</sup>

One further account of Indian visitors from out of state comes from Lyman Hayes' *History of the Town of Rockingham* in the southeastern part of Vermont.

During all the first half of the last century small parties of more civilized and peaceable Abenaki Indians used to visit Bellows Falls nearly every summer, coming from their homes in Canada and New York state. They came down

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<sup>36</sup> Newbury and Barnet are located on the Vermont-New Hampshire border along the Connecticut River (see Map above, p. vi).

the Connecticut in their canoes, usually bringing supplies of baskets and other trinkets which they had manufactured during the previous winters, which they sold to citizens of Bellows Falls and the then large number of summer visitors....The last remnant of this tribe came to Bellows Falls early in the summer, about 1856, in their birchbark canoes. (Hayes 1907:48-49).

The narrative goes on to portray the old chief who came to Rockingham with his family. It recounts stories the old man told about his war service with the English, and his visits to England. It describes the large silver medal from King George III which he wore. Most of his family returned to Canada at the end of the summer, but the old man, in ill health, stayed until he died there late that autumn. After burying him, his son returned to Canada, and no further mention of Indians in the area appears in the town history (Hayes 1907:49-50).

It is worth noting that these sightings of Indians were in parts of Vermont far from Swanton. Barnet is in the northeastern part of the state. Barre is in the central part of the state, and Bellows Falls is in the southeastern section. In two of the three accounts, the Indians are specifically identified as coming from Canada, Maine, or New York. In the third, the Indians came down the river to Barnet—which means down the Connecticut River, from the northern tip of New Hampshire, Canada, or Maine. In none were the Indians described as residing in the area. They were seasonal visitors who lived most of the year in Canada.

All the sightings above appeared before 1860. After 1860, to 1920, the Abenakis of Odanak/St. Francis made baskets for the tourist trade. They took their baskets directly to the emerging resorts and set up shops to sell their wares all summer (Pelletier 1982:1, 5; Pierce 1977:48-49 citing conversation with Stephen Laurent; McMullen & Handsman 1987:28).

These resorts were not located in the areas of any historic Indian villages. The baskets made during this time period were fancy baskets for wealthy tourists; they were more elaborate than the previous period's utilitarian woodsplint baskets (Ulrich 2001:347, Lester

1987:39). During this time, entire families from Odanak/St. Francis would move to a tourist area in the United States and stay there from the spring to fall. They sold baskets that they had made during the winter (Pelletier 1982:1, 5). This was a prosperous livelihood:

Each family chose a different resort area to which they usually returned annually and where they either owned a house or rented one. A basket stand or shop was erected on the premises from which they displayed their work and demonstrated their craft....In order to make the maximum number of baskets in the summer, the women were often freed from their household responsibilities by hiring local people to do the domestic work for them. (Pelletier 1982:5).

The resorts to which these families of Odanak/St. Francis traveled to set up shop included Highgate Springs, Vermont, on the border with Canada (Hume 1991:106). This resort area, along with others in the White Mountains of New Hampshire; Lake Placid, Lake George, Lake Mahopak, and Saratoga Lake, New York; Atlantic City, New Jersey; and Michigan, was chosen for its high concentration of tourists—the basket-buying customers of the Victorian age. Odanak/St. Francis Abenaki chief Joseph Laurent made a conscious effort to develop the basket selling business at such resorts by establishing seasonal Abenaki camps in the White Mountains of New Hampshire (Hume 1991:103). After over thirty years of selling baskets from this Intervale, New Hampshire, camp, the area became known as a center for Indians from Odanak—despite the fact that they had no previous historical tie to the area (Hume 1991:105, 111). Two members of the Obomsawin family interviewed by Gordon Day in 1957 stated that they did not believe that Abenaki families from Odanak/St. Francis returned to their historic place of origin to sell baskets. Rather, they believed sites for selling were chosen based on the ability to make sales (Day 1948-1973:14).

The fact that the Abenakis of Odanak/St. Francis developed these successful outlets for their baskets at resorts in the White Mountains, Adirondacks, and elsewhere, may explain

why there were less frequent sightings of traveling basketmakers peddling baskets house to house in Vermont in the second half of the nineteenth century. The Indians were focusing on more lucrative resort markets mostly outside of Vermont. This is a more sensible explanation for the lack of Indian sightings than the idea that they took their identities underground for protection.

The connection between Indians and basketmaking should not be extended so broadly that it obscures other facts. Just because someone is identified as a basketmaker does not necessarily mean he or she is Indian. There were Yankee baskets of oak splints produced by whites in the second half of the nineteenth century (McMullen 1991:77). Whites also learned basketmaking from Indians in the nineteenth century and developed their own industries as a result (Brasser 1975:23). Moreover, not only the basketmakers sold baskets. There were also gypsies who bought up baskets from the Penobscot Indians in Maine and sold them elsewhere in their travels (Lester, 1987:53, 57). One basket in a Vermont museum is reported to have been traded to a family in northeastern Vermont by gypsies in the late nineteenth century in exchange for hay for the travelers' horses (Vermont Historical Society 1983).<sup>37</sup>

The association of horses and baskets with gypsies is not unusual. Indeed, Romnichel gypsies from Britain brought horses to the United States from Canada during the decades after 1860 (Salo & Salo 1982:286). And there were gypsies known to live in eastern Canada during that time period (Salo & Salo 1977). Moreover, basketmaking was a common trade for gypsies in New England (Salo & Salo 1982:288-91).

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<sup>37</sup> The VHS accession sheet notes that the donor made a parenthetical comment that the gypsies who traded the basket may have been Indians. This shows the confusion between gypsies and Indians that has developed in recent years.

In sum, from 1800 to 1860 the sightings of Indians in Vermont represented traveling families from Canada and Maine selling baskets and wares. Such sightings diminished and were unmentioned after 1860 as the Abenakis found better markets in resort towns outside of Vermont. The occasional mention of basketmakers in Vermont after 1860 can be attributed to whites and gypsies who took up the trade.

### Rowland Robinson's Indian Friends

Vermont author and illustrator Rowland E. Robinson (1834-1900) was known in the late nineteenth century for his naturalistic stories about Vermont. His writings are sometimes cited in support of arguments that the Abenakis maintained a continuous presence in Vermont (Dann 2001). Robinson's works are instructive, but not for the proposition that there was an uninterrupted Abenaki presence in Vermont. The Indians about which he wrote were from Odanak/St. Francis.

Robinson lived in Ferrisburgh, at the southern end of Lake Champlain. While his stories were published as fiction, they are widely acknowledged to be faithful renditions of real people, scenes, and events (Collins 1934: 5-6, Martin 1955:11).<sup>38</sup> Robinson's stories include a detailed description of the construction of an Indian canoe, Indian folk legends, and many Indian names for places in Vermont. He gleaned this information from Indians with whom he became friends. This is attested to by some of his personal journals and correspondence that are still extant.<sup>39</sup>

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<sup>38</sup> Collins wrote: "Every reader of Robinson will grant, however, that he was one of those Vermonters who seem gifted with the mind of a natural-born investigator. Upon readers of Robinson, whether folk-lore, essays, or history, is laid the conviction that here is an author who knows whereof he writes" (Collins 1934:6).

<sup>39</sup> His papers are housed at the Rokeby Museum, Ferrisburgh, Vt., and the Henry Sheldon Museum of Vermont, Middlebury, Vt.

Gordon Day drew on Robinson's writing as a source of ethnological material (Day 1978a). In the following summary, Day pointed out that the Indians with whom Robinson was familiar were visitors from St. Francis:

Did he know the Indians? According to Collins: "Almost every year small bands of St. Francis Indians...camped about Vergennes," Vergennes being at the first falls of Otter Creek and close to Robinson's home. In his geographical essay entitled Along Three Rivers, Robinson writing about Lewis Creek said, "I remember visiting with my grandfather a camp of St. Francis Indians, in a piney hollow that divides the south bank." A footnote in his historical sketch of Ferrisburgh, written in 1860, proves that he was already acquainted with John Watso, the Abenaki Indian who became his principal informant. His letter to Manley Hardy of Brewer, Maine, implies that he was still in touch with this informant in 1896. Such direct testimony does not need support, but again Robinson's own work confirms it. The Indian characters whom he introduced into his stories bore family names which were current in the St. Francis band in the 19<sup>th</sup> century, names like Wadzó, Takwsés, and Otodosán. (Day 1978a:37).

Day believed Robinson had seen the Indians from St. Francis coming to sell their baskets in the 1850's (Day 1978a:39). Indeed, the Indians who visited Vermont in Robinson's narratives came to sell baskets and moccasins around the countryside (Robinson 1921a:92, 1921b:136).

Among the indications that the Indians who visited Ferrisburgh and neighboring Charlotte were not local residents is Robinson's identification of them as "Waubanakee of Saint Francis." In his article on the history of Ferrisburgh in Abbie Maria Hemenway's *Vermont Historical Gazetteer*, Robinson related information he personally gathered from "John Watso, or Wadhso, an intelligent Indian of St. Francois" (Robinson 1867:32). This was contemporaneous information from an Abenaki living in 1858.<sup>40</sup> Watso related the history of the departure of Indians from Vermont as follows:

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<sup>40</sup> Collins says that Hemenway met Robinson in 1858 and that his essay on Ferrisburgh was first published by her in 1860 (Collins 1934:8-9).

By the forays of their enemies, the warlike Iroquois, and the encroachment of the whites, the Zoquageers were gradually driven from Vermont, and their last village of consequence within its limits, was on Missisque Bay, in the present town of Alburgh. They had, for the most part, removed before the Revolution to the St. Francois River, in Canada, where the survivors of this once powerful tribe now live, commonly known as the St. Francois Indians, though, they style themselves as of old, Zoquageers and Abenakees, or as they pronounce it, *Wau-ban-a-kees*. (Robinson 1867:31).

This testimony is made all the more reliable by the confirmation of the Watso family name in records of Odanak/St. Francis in the 1870's. The Watsos were residents of the Quebec reserve, and some members of that family are listed on the reserve's 1875 census as absent in the United States (Canada, Indian Affairs 1875).

A further sign that these Indians were visitors comes from Robinson's accounts of the news these visitors brought him of friends who lived at Odanak/St. Francis (Robinson 1921b:135-37). For example, in May 1881, Robinson wrote in his journal that Louis Tahmont, an Abenaki from St. Francis, told him that his brother, Swasin Tahmont, has "gone by the 'strong water stream' to happier hunting grounds than these. I knew him well, and then, 25 years ago, he would not touch whiskey" (Robinson 1879-81). Obviously, Robinson had not seen his friend for 25 years, since Swasin did not live near Ferrisburgh; he lived in Canada. The connection of these individuals to Odanak/St. Francis is nowhere more evident than in a letter Robinson wrote in 1894 to Joseph Laurent, the Chief of the St. Francis Abenaki, in which he said:

Years ago I knew several of your people—John Wadso and his sons Thomas and Samuel—his father called him [Dodosen?]<sup>1</sup>—also Swasin Tahmont and his family, and [ ] Louis Tahmont and Joseph Tucksoose. Please remember me to such of them as are living. (Robinson 11/1894).

Another mark that signifies these Indians are not living in Vermont is their connection to New York State. In his journal entry of April 30, 1881, Robinson relates his

visit with Joe Tucksoose and Louis Tahmont (Robinson 1879-81).<sup>41</sup> He wrote that Tucksoose had served in a New York Regiment of the Union Army. There were members of both the Tahmont and Toxus families in New York State near Lake George in the federal census records for 1900, listing their parents' birthplace as Canada (U.S. Bureau of the Census 1900a).

Further corroboration that Robinson's Indian friends usually lived elsewhere and only occasionally came through Vermont is apparent in his search for the Indian names for rivers, mountains, and natural places in Vermont. His many inquiries and discoveries of native place names are recorded in his journal entries, his letter to Chief Laurent, and stories like "Sobapsqua" and "On a Glass Roof." He was enamored of the Indian language, as this passage reveals:

"Thompson's Point" is not a good name for a noble headland, but it is better that it should have borne it for a hundred years than half a dozen that are no more significant.

The Waubankees called it "Kozoapsqua," the "Long Rocky Point," and the noticeable cleft promontory opposite "Sobapsqua," the "Pass through the Rock," names which might well have been retained, and perhaps would have been if our pioneer ancestors had not so bitterly hated the Indians and all that pertained to them. There was cause enough for this hatred, but one wishes it had not been carried so far when the poverty of our ancestors' nomenclature is considered and the few surviving names of Indian origin remind us how easily we might have been spared the iteration of commonplace and vulgar names that cling to mountain, river, and lake. (Robinson 1921a:89-90).

Robinson took every opportunity to learn Indian names; he also enlisted the aid of his nephew William Robinson in this word search, as Bill was living in Montreal.<sup>42</sup> While in

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<sup>41</sup> Although the cover of the journal states it spans 1879 to 1880, it actually contains entries through 1889.

<sup>42</sup> There are two existing letters from William Robinson to Rowland E. Robinson in the Rokeby Museum's collection of Robinson letters housed at the Sheldon Museum in Middlebury, Vermont.

Montreal, Bill found four old Abenakis who had fought in the Battle of Plattsburgh in the War of 1812 and “have spent many of their days along old Pe-tow-boroke” (Lake Champlain). This is another indication that Indians who had previously lived in Vermont had retired to Canada (Robinson, W.:1/14/1880). It once again confirms that the sources of Indian knowledge of Vermont during the late nineteenth century were primarily located elsewhere.

All of this effort indicates that Robinson was unable to find any local Indians in Vermont to supply him with Indian place names. The fact that someone of his diligence could not find any informants on Indian words in western Vermont in the 1880’s and 1890’s implies they were not present. If they had been there, one would expect his traveling Indian friends to have told him about them.<sup>43</sup>

Petitioner explains the absence of a visible Indian community by arguing that the Vermont Abenakis settled down, adopted white man’s ways, and joined the white man’s economy (Petition:71). The problem with this explanation is that it doesn’t square with other information in the petition. There is plenty of evidence that *petitioner’s* ancestors held the same sort of jobs that whites held in Franklin County: grocer, stone cutter, farm laborer (Petition:74, 76). But this does not mean that Abenakis were *acting* like whites. It is equally

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One is dated Sept. 13, 1895, the other Jan. 14, 1880. See Rokeby’s collection of Robinson family letters, Box 8, folder 27; Box 6, folder 16. They both appear to be part of ongoing communications regarding the Abenakis. In one Bill told Rowland what he learned in his visit with the Abenaki historian Father Maurault, and promised to help Rowland pronounce words that he learned from some old Abenakis in Montreal.

<sup>43</sup> For example, Robinson wrote in “On a Glass Roof,” that the Indian he met fishing “and a few of his people were wintering in a neighboring village” (Robinson 1921b:136). Although one might think that he is referring to an Indian village, it is not clear. He does not specify it as Indian, and he does not tell its location with any sense of familiarity. If there were a permanent Indian village in the area, one would expect the historian of Ferrisburgh to know about it.

possible that the real heritage of petitioner's ancestors was French Canadian, and that is why they did not show signs of an Indian identity.

Moreover, the explanation that the Abenakis simply settled into a sedentary town life does not account for the unassimilated Indians who Leo St. Francis recalls seeing from a distance behind the Slamon Farm near the swamp (Petition:97). If his observation is correct (and we have no verification that those were Indians he saw), that means there were Indians in the area who continued to live a distinct lifestyle apart from the white community. But they are not part of the petitioner's group! The petitioner is comprised of people who were indistinguishable from the white population; it does not include the visible Indians known to Robinson and others.

It is significant that Rowland Robinson did not confuse white French Canadians with Abenaki Indians. In his era, he knew them as two separate groups. He made a clear distinction between them, unlike petitioner in its account of its ancestors blending in with the rest of society. In his stories about Danvis he portrayed Antoine Bassette as a garrulous French Canadian. When Sam Lovel, the main character, encountered Indians in Danvis, Antoine was as surprised as any of the others, and made fun of the eggshell canoe the Indians were building (Robinson 1937:232).

Likewise, in "On a Glass Roof," Robinson described meeting three men separately ice-fishing—the first two French Canadian, the last one an Abenaki. He depicted their speech with two discretely different accents (Robinson 1921b:133, 138). And, while he dismissed the first one saying "these Canucks think all the fish and all the berries belong to them," he went on to speak admiringly of the Abenaki from St. Francis (Robinson 1921b:132, 135). He was attracted to him as he realized here was an "ideal angler," "plying

the gentle art here in the warpath of his ancestors” (Robinson 1921b:135). In contrast to the talkative French Canadians, this fisherman was “as taciturn as his ancestors could have been” (Robinson 1921b:136).

The point of Robinson’s observations is that they demonstrate the visibility of Indian visitors to Vermont and the nonexistence of any Indian residents. His writings illustrated the maintenance of an Indian culture that showed its presence in Vermont only through the traveling Abenakis from Odanak/St. Francis.

### French-Canadian Migration to Vermont

The lifestyle and migration pattern described by the petition is not evidence that these families are Indian. The movements of these people are the same as the travel patterns of the French Canadians who were migrating into and through Vermont during the same time. There is nothing in the evidence of lifestyles that distinguishes the petitioner’s relatives from the French Canadians. Moreover, the genealogical material below will show most of the petitioner’s ancestors can be traced back to French Canada. See analysis in section on *Criterion (e)*.

The Indians in the petition were described as having a seasonal migratory pattern, coming into Vermont after the Revolution, and concentrating their stays in the northwestern part of the state, around Lake Champlain (Petition:71). Similarly, the French Canadians began moving into border areas of Vermont shortly after the American Revolution. According to Ralph Vicero who extensively analyzed French Canadian immigration to Vermont, “The major concentrations, however, coincided with those areas bordering on Lake

Champlain, the historic corridor leading from the St. Lawrence settlements into New England” (Vicero 1968, 1971). This is the same area where petitioner’s ancestors settled.

For many of the French Canadians, their residence in Vermont was seasonal, or short term:

immigration never was intended to be a permanent move; rather, an early return to Quebec was anticipated. Some returned after a winter’s or summer’s work in the mills, others after a stay of one or two years when they had saved enough money to pay off the mortgage on their farm or to purchase additional land. (Vicero 1971:290, *see also* 1968:194).

They did not only work in the mills. Their work as farm laborers in the Champlain Valley was colorfully described by a local resident this way:

In the Champlain Valley, a hundred years ago, more or less, before mowing machines were in general use, came bands of men from the north each armed with a scythe with which to attack the meadows of that rich farming country. With the aid of their trusty blades, meanwhile being refreshed from the inevitable jug in the shade, they accomplished the haying and returned to their “Canadaw.”...The Canadians, with their scythes, were placed in a line across one end of a field and, incited by competition, moved forward in rhythmical motion, leaving the grass flat in broad expanse behind them and throwing jeers over their shoulders at the man who couldn’t keep up. (Horsford 1925:11).

This seasonal migration, for farm or mill work, matched the seasonal visits of people described in the petition. And the occupations of these French Canadians were day laborers, wood choppers, quarry workers, and farm laborers—all positions held by the ancestors of the petitioner (Petition:71, 74, 84, Vicero 1971:293).

The timing of French Canadian immigration followed the economic cycles in Quebec and New England. The immigration dates of petitioner’s ancestors included in the Family Descendancy Charts coincided with the swells of French Canadian migration (*see* Table 2, below, for immigration dates). This correlation again adds to the implication that the petitioner’s ancestors had closer ties to the French Canadian population than to any possible

Indian population. The Morits family arrived in the 1820's, a time marked by "a noticeable increase in the migration [due to] the steadily worsening state of Quebec agriculture" (Vicero 1971:290). Widespread failure of the wheat crop in Quebec in the 1830's along with abortive rebellions in Canada in 1837 and 1838 meant much immigration in those years (Vicero 1971:290). That is when the St. Laurent, Colomb, and Medor families arrived.

The failure of the potato crops in the 1840's coupled with rural indebtedness caused many Quebec residents to seek an escape to the United States between 1840 and 1850 (Vicero 1968:389). During that decade, "it appears that more than three-fifths of the estimated net migration was directed toward Vermont" (Vicero 1968:396). It is during that time of the 1840's that the Hance, St. Francis, Phillips, and Desmarais families moved to Vermont.

Between 1865 and 1873, the economic boon in New England attracted a surge of migration from Canada (Vicero 1968:212). "The Bishop of Vermont was so impressed by the number of migrants he observed that he claimed that the French-Canadian population of his diocese had doubled between 1866 and 1868" (Vicero 1968:205). While this may have been an exaggeration, there is a report that "more than 500 migrants had been added to Burlington's population during 1868" (Vicero 1968:249, n.72). The French Canadian population of Vermont increased 75% between 1860 and 1870, from 16,580 to 29,000 (Vicero 1968:275). During the late 1860's and 1870's the Hoague, LaFrance, and Ouimette families came to Vermont.

After 1870, there was very little growth in that group's population in Vermont, as work in other New England states became more attractive (Vicero 1968:275-77).

Correspondingly, among the petitioner's families, the ones that arrived in Vermont after 1870

(Hakey, Partlow, Gardner, Lapan, and Nepton) did not come from Quebec. Instead, they came there from Massachusetts or New York State.

The coincidence in the timing of the waves of immigration of petitioner's ancestors with the waves of French Canadians from Quebec is unmistakable.

### **Caughnawagha Claims Presented to Vermont Legislature**

The petitioner mentions “one other event that coincided with the abandonment of the village at Missisquoi”—the 1798 petition by the Mohawks from Caughnawagha for compensation for the loss of fishing and hunting territories in Vermont. As the petitioner allows, this claim “undoubtedly helped at the time to reinforce the notion that the Indians had quit the area altogether” (Petition:51). Vermont Governor Tichenor investigated the claim and advised the Legislature that the Caughnawagha claims had no merit as they had been extinguished, and furthermore, that Vermont could not grant such a claim without the consent of the U.S. Congress (Calloway 1990b:235, State of Vermont 1880:319-20, (reprinted in Petition:184-85)).

Calloway said the Caughnawagha made this claim on behalf of the entire Seven Nations of Canada—that is, the six Iroquois nations of Canada and the Abenakis of Odanak/St. Francis (Calloway 1990b:235). He said the Abenakis had to sit by and watch the Mohawks make this claim. There are two problems with this interpretation. First, it is not clear that the Caughnawagha made the claim on behalf of the entire group of nations. In answer to a question posed by the Vermont Governor, they said that their neighbors “on the north east” were the “Abenakees of St. Francois” (State of Vermont 1880:314 (reprinted in

Petition:182)). This suggests they were speaking on their own behalf, and not for the larger group, which would have included the St. Francis Abenakis.

Secondly, one must question the view that the Abenakis sat by and watched while the Caughnawaghas made a claim for land that was supposedly theirs. In 1766, at Isle la Motte, the Abenakis did not just sit by; they spoke up and voiced their own demands at the same time. So, why didn't they speak up now? One possible rejoinder is that they had secure lands of their own and did not feel threatened by this claim for compensation by the Caughnawaghas. However, this does not fit with the other evidence of their loss of land to white settlers, and of the many accounts of their migration to Canada at this time.

An alternative answer is that they had essentially given up all their land and left. If there were any Abenakis remaining in Vermont they were not part of an organized tribal community with any leaders capable of speaking up for land as they had in 1766. This second hypothesis is more plausible and is reinforced by subsequent events. The 1798 Caughnawagha claim for compensation was but the first of a series of such claims throughout the nineteenth century and halfway into the twentieth.

In 1800 the claim was renewed and again denied. This time it was brought by a new set of chiefs, including two representatives of the Abenaki nation<sup>44</sup> (State of Vermont 1880:321 (reprinted in Petition:185)). The addition of the Abenaki suggests that they knew about the claim and wanted to participate in it this time. There is no indication in the sparse record that remains as to where these Abenaki representatives came from. If they were from within Vermont, they should have joined in the subsequent requests. However, the Abenaki

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<sup>44</sup> The exact identity of these representatives cannot be ascertained; apparently the original papers have been lost (State of Vermont 1880: 322 (reprinted in Petition, 186)).

never participated in any of the ensuing claims for compensation brought by the Caughnawagha (State of Vermont 1880:321, n. 2 (reprinted in Petition:185)).

The claim was brought again in 1812. While the first petition was made “by the Chiefs and Councillors of the Seven Nations of Lower Canada Indians,” this one was put forth by the “chiefs of the Iroquois or Congnahwagha nation” (Compare (State of Vermont 1880:313 with 322 (reprinted in Petition:181, 186)). The subsequent 1826 claim was also made only on behalf of the “Iroquois tribe, residing in Cognawagah village” (State of Vermont 1880:325 (reprinted in Petition:187)). The next two claims, in 1853 and 1874, were made by the Caughnawagha and the Iroquois at St. Regis and Lake of Two Mountains (State of Vermont 1880:328, 343 (reprinted in Petition:189, 196)). These and all subsequent claims were also denied.

If there was any doubt in the first claim as to whether the Caughnawaghas spoke for the entire Seven Nations of Canada, including the Abenakis, it is dispelled in the later claims. The language of the claims indicates that the Abenakis were not represented in those proceedings by the Caughnawaghas after 1800. While the St. Regis and Lake of Two Mountains Indians joined some of the later claims, the Abenakis never did. This reinforces the point that there was no group of Abenakis in Vermont in the nineteenth century with enough tribal identity and political cohesion to speak up and ask to be included in any of these Indian claims. The evidence surrounding the Caughnawaghas’ 1951 claim reiterates that position with respect to the mid-twentieth century, as described in the section on *Criterion (c)* below.

## TWENTIETH CENTURY

### **Twentieth Century Claims of Abenaki Continuity**

There is very little to say about the Abenakis in Vermont in the twentieth century until the 1970's. From 1900 to 1974 they were invisible, if they were here at all. Most of the twentieth century material will be addressed in response to the specific criteria, but a brief overview here will provide background.

There was no noticeable Abenaki community in Vermont, let alone Franklin County, from 1900 to 1970. It was only in 1970, with the increase in ethnic consciousness across the U.S., that Abenakis became detectable. In 1974 a group of individuals re-constituted the tribe and created a tribal council. The petition credits the associations made through veterans groups after WWII as the immediate precursor to the social and political reorganization of the St. Francis/Sokoki Band of Missisquoi in the 1970's (Petition Addendum:123). The petitioner concedes this was re-creation, re-emergence, and re-organization of the community (Petition Addendum:126).

One of the first things the Tribal Council did was push for state recognition. Its efforts led to the Baker report to the Governor of Vermont in November, 1976.<sup>45</sup> This report prompted the outgoing Governor Thomas Salmon to issue an Executive Order recognizing the Abenakis in Vermont. State recognition was short-lived. Two months later, in January, 1977, newly elected Governor Richard Snelling revoked the Executive Order.

### **The Eugenics Survey of Vermont**

The Second Addendum to the Petition, filed with the BIA in 1995, lists one of its

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<sup>45</sup> The reaction to the Baker report by scholars of Abenaki history and ethnology is discussed below in the section on *Criterion (a): 1974 to 1981*.

sources as the Vermont Eugenics Survey (Second Addendum:9). The Second Addendum describes the survey as an “insidious and discriminatory program” aimed at “the eradication of mental and moral ‘defectives’ within the community.” It states that despite this, the archives of the survey are “extremely valuable in demonstrating the ancestry of the Native-Americans in Vermont who were especially targeted to be victims of this program” (Second Addendum:9). The notion that Indians were targeted by the Eugenics Survey is but a mere mention in the petition; however the idea has loomed large in the petitioner’s public arguments for tribal acknowledgment. The ways in which the petitioner has exploited the Eugenics Survey are explained below and in the Affidavit of J. Kay Davis, which is attached to this Response.

For example, in a press packet entitled “The New Vermont Eugenics Survey,” released in February 2002, Frederick Wiseman, an Abenaki spokesman, wrote:

Once long ago, in the 1920’s, post WWI tide of xenophobia turned inward to haunt inter-ethnic relations in the “the whitest state in the union.” Dr. Henry Perkins of the University of Vermont and a group of Anglo intellectual and civic leaders founded the Vermont Eugenics Survey. Its purpose was to study groups of Vermonters (called the “unfortunates”), who by their very existence needed more state assistance, social programs, institutionalization, legal fees, etc than the “old stock” Anglo Vermonters. In order to stem this “drain” of resources, the survey began a study of the family histories of “horse trading, basketmaking” Abenaki lineages. The Eugenics Survey’s dream was realized in 1931, when Vermont passed the Act for Voluntary Sterilization. (Wiseman 2002:1).

Wiseman’s book, *Voice of the Dawn*, is filled with similar rhetoric geared to bolster public support for federal acknowledgment. There he sought to explain away the invisibility and lack of information about the Abenakis by blaming the Eugenics Survey:

Soon the lens of genocide was trained on the Gypsies, Pirates, and River Rats,<sup>46</sup> as well as other ethnic groups. Employing the latest genealogical research and statistical record keeping techniques, the survey added new technologies to the list of ancient genocidal procedures used by New English authorities against the Abenakis. In addition, they provided social and police organizations with lists of families to “watch.” Unfortunately, the social gulf between elite Anglo culture and the village dwelling River Rats and Pirates was not so wide that they could entirely escape notice. Major Abenaki families at Missisquoi were especially at risk. The more “hidden” families and the Gypsies partially escaped unheeded—for a while. But then began ethnic conflict incidents as Gypsies and Pirates had their children taken from them. The theft of children and the hatred emanating from the burning cross and Ku Klux Klan rallies are still recalled by Abenaki and French Canadian elders in Barre, Vermont. Any family who still had thoughts about standing forth as Abenaki, due to the tourists’ continued interest in our arts and culture quickly retired to obscurity as the tide of intolerance rose. We continually needed to be on our guard with the police, the tax man, and the school board, the eyes and ears of the survey. (Wiseman 2001:147-48).

The notion that the Eugenics Survey caused the Abenakis to hide their Indian identities became current in the late 1990’s when it made its way into a history kit published by the Vermont Historical Society in 1998:

History books have long claimed that the Abenaki “disappeared” from Vermont. While some Abenaki did leave Vermont for Canada, many others remained. As the Abenaki began to speak French or English and adopted European dress, historians of the nineteenth century assumed that the Abenaki had vanished. The Abenaki families who remained in Vermont survived in a variety of ways. Some lived a nomadic life and were called “gypsies.” Others remained on the outskirts of their communities and lived off the land as they had for centuries—hunting, fishing, and trapping.

From the 1920’s through the 1940’s the Eugenics Survey of Vermont...sought to “improve” Vermont by seeking out “genetically inferior peoples” such as Indians, illiterates, thieves, the insane, paupers, alcoholics, those with harelips, etc....As a result of this program, Abenaki had to hide their heritage even more. They were forced to deny their culture to their children and grandchildren. (Vermont Historical Society 1998:31).

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<sup>46</sup> The first annual report of the Eugenics Survey used the terms, “Gypsy,” and “Pirate” to describe some of the families it portrayed. The term “River Rat” is not found in the reports (Eugenics Survey of Vermont 1927:8).

The concept of the eugenics survey driving the Abenakis underground was trumpeted again at the time of Chief Homer St. Francis's death in 2001. One newspaper article reporting on St. Francis's passing said:

The tribe that St. Francis grew up in was one that had been devastated by European settlement and driven underground by racism. That racism found its purest expression in the "eugenics" campaign of the 1920s and '30s, which promoted the sterilization of Abenaki and other groups of Vermont's "undesirables." (*Burlington Free Press* 7/9/2001).

However, the argument was never made by any scholars of Indian history in Vermont before 1991. Jane S. Baker's Report to Governor Salmon in 1976 does not mention it, nor does Ken Pierce's 1977 *History of the Abenaki People*. John Moody's manuscript on Missisquoi in 1979 does not insinuate any link between the Eugenics Survey and the invisibility of the Abenakis; he doesn't even mention the survey. This is very surprising since all three of these authors based their writings on extensive interviews with people claiming Abenaki heritage. All three of them earned the trust of their informants, yet they never disclosed the survey as a significant factor in Abenaki history.

Most importantly, neither the original petition for federal acknowledgment, filed in 1982, or the first Addendum to the Petition filed in 1986 contains any mention of the survey. Only the Second Addendum, dated 1995, refers to it, but without any of the arguments of its effect on the invisibility of Abenaki families. To unpack the building of this myth, a more detailed examination of the Eugenics Survey of Vermont is required.

Established in 1925, the Eugenics Survey was one of many undertaken in the United States during the 1920's and 1930's. Vermont's was headed by Henry F. Perkins, Chairman of the University of Vermont's Zoology Department. The Survey issued five reports between 1927 and 1931. It conducted surveys of towns and surveys of people. It created

genealogical pedigree charts of twenty-two families in depth, and began charts for dozens more (Dann 1991:6, Gallagher 1998). The survey led to the creation, by Henry Perkins, of the Vermont Commission on Country Life (Dann 1991:6, 17-19).

One focus of the Eugenics Survey was the physical and mental condition of the Vermont population. The authors saw embarrassingly large numbers of Vermonters rejected from military service in World War I on physical and mental grounds. State officials wanted to know why so many were rejected (Ainsworth 1944:11). The State officials were also concerned about the population losses due to emigration out of the state, and the lack of industrial changes in Vermont compared with other New England states (Ainsworth 1944:10-11). Meanwhile, they saw rural towns becoming depopulated, causing a deterioration of the social structure (Gallagher 1999:45).

The reports of the survey and its work led to further study of population trends by the Vermont Commission on Country Life. That Commission attempted to answer these questions: What are the motives of those who left the state? What are the motives and vocational choices of those who stayed in Vermont? What are the motives of those who have moved into the state and what contributions have they brought? (Perkins, H.:1930:2-3). Survey authors advocated reforms in family welfare, public health, economic aid to rehabilitation, and education, but also endorsed sterilization as a matter of social policy (Ainsworth:17).

One method used by the Eugenics Survey to analyze population trends in Vermont was to classify towns by certain characteristics. In a section of the survey papers labeled "Towns Suggested for Study," is a map labeling towns as "declined in some way," "desirable or progressive," "outlanders," "summer people," or "original stock" (Eugenics Survey of

Vermont [1929]). In the northwestern part of the state, the area where the Abenaki claims are greatest, two towns were labeled for study because they had “declined in some way.” These were Swanton and Fairfax. The narrative descriptions accompanying the map indicate the reasons for examining them—and they have nothing to do with possible Indian populations. Rather, Fairfax was suggested for study to determine “why the theological seminary left and what was the effect of its departure on the town” (Eugenics Survey of Vermont [1929]). The reasons Swanton was cited for study were succinct:

Swanton presents an interesting problem. During the war, there was a large shirt (?) factory there and the town was thriving. Now the factory stands empty, and in spite of the fact that there is apparently everything to do with – water power, some marble, and available building – the town is on the decline.

It would be interesting to see whether or not the town was pushed beyond its capacity during the war or whether it still has possibilities for a steady prosperity. (Eugenics Survey of Vermont [1929]).

There is nothing in these descriptions that would lead one to believe the targets of the Eugenics Survey were areas of Indian habitation. Furthermore, the nearby towns of Highgate, Franklin, and Sheldon, claimed to be havens for Abenaki families, were not suggested for study at all.

The only other northwestern Vermont towns suggested for study were on the Lake Champlain Islands: North Hero, Grand Isle, and Alburgh. All three were labeled as having summer people and outlanders. They are noted as having two distinct classes of people—old settlers and new French Canadian families. The survey notes that population was declining as most of the young people were leaving. Once again there is no mention of Indians (Eugenics Survey of Vermont [1929]).

There is nothing in the Eugenics Survey papers that indicates that Indians were targeted by the survey. If any group was targeted, it was the French Canadians (Davis

Affidavit, Attachment A:9). The *Third Annual Report of the Eugenics Survey of Vermont* published in 1929, included a list of “Some English Corruptions of French Names.” The survey printed this list because “the spelling of a name is seen to change through successive generations. It is easy to see that such discrepancies might throw one off the track for a long time.” The implication is that the surveyors were particularly interested in following the French Canadian “track” (Eugenics Survey of Vermont 1929:5).

Perkins was enthusiastic about studying French Canadians. He sought grants to further the study of this group, and hoped to develop data correlating the degree of French-Canadian ancestry with “mental testing, educational attainment, and various cultural factors” (Gallagher 1999:95). Vermont’s focus on French Canadians continued into the 1930’s. The Works Progress Administration guide, *Vermont: A Guide to the Green Mountain State*, said that “[s]ince 1900 the largest single immigrant group has been the French-Canadian. As early as the 1930’s this element began replacing the Yankee farmers in the northernmost tier of counties; today they constitute approximately one-quarter of the population there (including second generation) as compared with thirteen percent of the State’s total” (Works Progress Administration 1937:51). This group was by far the largest of any immigrant group.<sup>47</sup>

An impressive study of racial interaction in Vermont arose out of the midst of the Eugenics Survey. This was Elin Anderson’s *We Americans: A Study of Cleavage in an American City* (1937). While Anderson had worked under Perkins for the eugenics survey for seven years, she brought an entirely different interpretation to the material. Rather than

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<sup>47</sup> After the French-Canadians’ thirteen percent portion, the next largest group was the non-French Canadians, which comprised three per cent of the state’s population. No other group even reached one percent (*Works Progress Administration* 1937:52).

promote the pioneer-stock Yankees as the epitome of society, she exposed their narrow-mindedness toward other ethnic groups (Anderson 1937:155-56). Her study sought to understand the reasons for cleavages within communities, to determine the extent to which they were ethnically based, and to look for ways to move beyond those divisions. Anderson began by surveying a sample of residents from six of Burlington's ethnic groups: French-Canadians, Irish, Germans, Italians, Jews, and Yankee "Old Americans" (Anderson 1937:272). They were surveyed using a set of questions that inquired into the extent the immigrant groups interacted with each other, were assimilated into the mainline culture, or were intentionally kept separate.

The model survey form was designed for French-Canadians; the others were adaptations of it (Eugenics Survey of Vermont [1932-1936]). This again shows the prominence of the focus on French-Canadians as the dominant immigrant group. One question specifically listed fourteen other ethnic groups and asked for the respondent's perception of them. The fourteen groups listed included French Canadians, Irish, Americans/Yankees, English Canadians, Italians, Jews, Germans, Syrians, French, Scottish, Greeks, English, Scandinavians, Chinese, and Negroes (Eugenics Survey of Vermont [1932-1936]). There was no surveying of attitudes toward Abenaki Indians, or Native Americans of any kind. They were not enough of a recognizable entity in Burlington in the 1930's to be part of the study.

The first published source to draw a connection between the Eugenics Survey and the Abenakis was Kevin Dann's 1991 article in *Vermont History*, "From Degeneration to Regeneration: The Eugenics Survey of Vermont, 1925-1936." There Dann noted a connection between the survey and the Abenakis:

No people represented a mobile, uncontrolled social group in Vermont better than the first two subjects of the Eugenics Survey investigations—the “gypsy” and “pirate” families. Principally of Abenaki and French-Canadian ancestry, the “gypsies” moved freely about a wide part of the state, almost entirely outside mainstream economy and society. The “pirate” families were equally mobile, taking their canal-barge houseboats to points up and down Lake Champlain where they might live unmolested. (Dann 1991:14).

He did not provide any citation for the source of this information. Moreover, Dann’s article did not suggest that the Abenakis needed to conceal their identities as a result of the survey, nor did he suggest that the Abenakis were a primary target of the survey. However, these ideas evolved to take that form in the 1998 *Vermont History Kit* and Wiseman’s publications (Davis Affidavit, Attachment A:13-15).

Nancy Gallagher’s comprehensive history of the Eugenics Survey of Vermont did not independently verify any particular eugenic focus on Abenaki families. Gallagher stressed Henry Perkins’s and the survey’s interest in French Canadians (Gallagher 1999:45, 73, 95-97). Her only references to Abenaki subjects of the survey were based on representations by Moody and Dann (Gallagher 1999:81, 201-02, fns. 17-18). Commenting on the “gypsy” families that the petitioner claims are Abenaki, Gallagher observed that the survey’s “genealogical research had traced their origins to early-nineteenth-century immigrants from Quebec” (Gallagher 1999:81). However, she repeated the assertions of Moody that “recent research by the Abenaki people has revealed that Perkins and Abbott’s Gypsy family were indeed Abenaki families” (Gallagher 1999:81). She should have stuck with the genealogical evidence: these families were French Canadian (Davis Affidavit, Attachment A:8-16).

Both Dann and Gallagher were led to believe that the “gypsy” family was Abenaki, but there is no evidence of Abenaki descent in any of the families in the Eugenics Survey of Vermont’s records themselves (Davis Affidavit, Attachment A:8-16). Only an independent

search of genealogical records for proof of Abenaki heritage can substantiate such a claim. The gypsies of the first annual report of the Eugenics Survey were a composite drawn from two separate pedigrees in the survey: numbers two and four (Dann 1991:10). There are a few miscellaneous references (among several thousand pages of records) to Indians in the Eugenics papers. However, not a single one of the references identifies the individuals as Abenaki. Rather, the very few individuals who are identified as Indian appear in the Phillips family file, and they are associated with other tribes—Kickapoo or Caughnawagha Mohawk (Davis Affidavit, Attachment A:10).

As for the “pirate” family (pedigree 3 in the survey)—the Jeromes, the only possible Indian is Minnie Champagne, who married into the family, but did not have any children with her Jerome husband. Furthermore, petitioner seems not to claim any descent from the Jeromes, since there are no members of that family in the Family Descendancy Charts submitted by petitioner to the BIA in 1995.

So one wonders why Dann and Gallagher concluded these were Abenaki families. They had to have some other source—probably John Moody. His influence on Dann’s writing was alluded to in this statement from a letter Dann wrote to Gordon Day: John Moody “is going over my manuscript with fangs bared” (Dann 12/1/1989). And, as noted above, Gallagher relied on Moody as well. However, since neither Gallagher nor Dann analyzed Moody’s genealogical material or evidence of Abenaki ancestry, they had no way to verify his representation to them that these subjects of the Eugenics Survey were Abenakis.

The St. Francis family was not one of the primary families surveyed by the Eugenics Survey, but it is included in the files as an incomplete pedigree. That family is not identified

as Indian in the records. The specific family histories of the St. Francis family list the family as “French.” There is also a general reference to a French settlement in Swanton. One informant refers to “the St. Francis Indians,” which he describes as a “French and Indian mixture” (Eugenics Survey of Vermont [1926-1930]a).

Abenaki advocates such as Wiseman claim that the Eugenics Survey described Indians as gypsies or basketmakers as a proxy for calling them Indian directly. Supposedly this is because the surveyors did not recognize them as Indian, due to their cleverness at hiding their identity. However, it is hard to believe that Henry Perkins would have been blind to Indians in Swanton and surrounding areas if these were really the people his project was surveying. Perkins was the son of Professor George Perkins, state geologist, state naturalist, and state entomologist—“Vermont’s greatest nineteenth-century answerman” (Dann 2001:191). Moreover, the senior Perkins was an authority on Indian remains, and took his son to archeological sites (Perkins, G. 1873, Gallagher 1999:15). Not only that, but the Perkins family went on camping retreats in the Vermont wilderness in Swanton in the 1880’s (Gallagher 1999:15). If there were Abenakis in Swanton at the time, surely Perkins would have known of it and not confused them with French Canadians when he conducted his study years later.

The Eugenics Survey papers themselves offer another explanation for the absence of Abenakis. These basketmaking people who are now claimed to be Abenaki may be nothing of the sort. The survey papers reveal that the Phillips family (pedigree 4, gypsies) had no basketmaking heritage; rather, they learned to make baskets from a Frenchman while living on the poor farm in the Peacham-Danville area of northeastern Vermont (Eugenics Survey of Vermont [1926-1930]b).

The fact that some of the ancestors of the people in today's Abenaki community appear in the Eugenics Survey papers could be (1) because their families were French Canadian, or (2) because they intermarried with French-Canadians and became so closely identified with them that they adopted the French Canadian community as their own.

#### ANALYSIS OF CRITERIA

Based on the material made available by the BIA to the State of Vermont under the Freedom of Information Act, the State submits comments on the evidence for Criteria (a), (b), (c), and (e). Because of privacy exceptions to the Freedom of Information Act, the State has not been able to see the membership criteria or membership lists of the petitioner. Therefore, it is impossible to comment on the evidence provided by petitioner for Criteria (d) or (f).

#### CRITERION A—IDENTIFICATION BY OUTSIDERS

Criterion (a) requires that petitioner have “been identified as an American Indian entity on a substantially continuous basis since 1900” (25 C.F.R. 83.7(a)). The regulations specifically call for an examination of the petitioners and their ancestors through the lens of outsiders. They state, the “evidence to be relied upon in determining a group’s Indian identity” needs to be “evidence of identification by other than the petitioner itself or its members” (25 C.F.R. 83.7(a)). Self-reporting of the existence of a tribal entity does not satisfy this criterion. Indeed, “the criterion is intended to exclude from acknowledgment those entities ... whose Indian identity is based solely on self-identification” (59 Fed. Reg. 9280, 9286 (Feb. 25, 1994)). Examples of permissible identification are listed in the

regulations and include federal, state and local governments, anthropologists, historians, and other scholars, newspapers, books, and other Indians tribes.

Inherent in this criterion is the requirement that the identification be of the group as an entity, not individual people. The BIA's 1991 comments on the proposed revisions to the federal rules governing acknowledgment demonstrate this. Language was added in section 83.7 "to emphasize the fact that the criteria are applicable to the identification of tribal entities, not individuals" (56 Fed. Reg. 47322 (Sept. 18, 1991)). The U.S. District Court for the District of Columbia said the same thing in an opinion that stressed the "fundamental distinction between the political classification of groups as Indian tribes and the racial classification of persons as Indians" (*United Houma Nation v. Babbitt*, 1997 WL 403425 (D.D.C. 1997), \*6). It is not enough, said the court, for a group to be comprised of individuals of Indian descent; they must also be tied together as a tribal entity. It summed up by noting that "miscellaneous Indians do not make a tribe" (*United Houma Nation v. Babbitt*, 1997 WL 403425 (D.D.C. 1997), \*6).

In order to obtain federal acknowledgment as a tribe, the petitioning group must have retained enough of an Indian identity that it is recognizable and identifiable as an Indian entity to outsiders continuously from 1900 to the present. Full assimilation into the surrounding society will disqualify it from federal acknowledgment. The federal courts have reiterated this concept:

When assimilation is complete, those of the group purporting to be the tribe cannot claim tribal rights. While it might be said that the result is unjust if the tribe has suffered from federal or state discrimination, it is required by the communal nature of tribal rights. To warrant special treatment, tribes must survive as distinct communities....the district court specifically found that the appellants had not functioned since treaty times as "continuous separate, distinct and cohesive Indian cultural or political communit(ies)." (*United*

*States v. Washington*, 641 F.2d 1368, 1373 (9<sup>th</sup> Cir. 1981), *cert. denied*, 454 U.S. 1143 (1982)).

If a group is not distinct enough to be viewed as separate and different from the rest of society, then it no longer has a separate identity as an Indian tribe.

Connected with the continuous identification of the tribal entity by outsiders is the requirement that the tribe be a continuously existing one—not a group that formed in recent times. The comments on the proposed rules (adopted in 1994) reiterate this (56 Fed. Reg. 47321 (comment on Section 83.3 Scope)).

BIA decisions illustrate how various types of evidence are evaluated under this criterion. The case of the MaChris Lower Alabama Creek Indian Tribe is a good example. The evidence sought and examined in that case came from many sources. Federal census records were searched, yet none of the ancestors of the group was identified as Indian in those records (BIA MaChris Lower Alabama Creek Indian Tribe 1987:6). Local and regional histories of the relevant counties in Alabama were examined, but the MaChris were not identified as a group in any of them (BIA MaChris Lower Alabama Creek Indian Tribe 1987:6, 14). Scholarly works on the Creek Nation did not refer to the MaChris group (BIA MaChris Lower Alabama Creek Indian Tribe 1987:6). A locally and regionally known historian did not know that an Indian group had survived in the area, despite the fact that he had conducted extensive research on the early history of the region (BIA MaChris Lower Alabama Creek Indian Tribe 1987:24-25).

The group was not mentioned in any newspaper articles until 1983 (BIA MaChris Lower Alabama Creek Indian Tribe 1987:6, 14). Other sources consulted and referenced by BIA researchers were military and veteran pension records. Again, none of them designated the individuals as Indian (BIA MaChris Lower Alabama Creek Indian Tribe 1987:12). The

BIA also found it significant that student researchers “traveled throughout Alabama in search of remnant Indian groups, but did not discover any reference to the MLACIT or its individual members” (BIA MaChris Lower Alabama Creek Indian Tribe 1987:14). In sum, the MaChris did not appear in any records as an entity until 1982. There was no evidence to link them to the Creek Indians who were removed from the area in 1838. This gap in identification disqualified them from federal acknowledgment (BIA MaChris Lower Alabama Creek Indian Tribe 1987:2, 6).

The evidence of external identification of the St. Francis/Sokoki Abenaki presented in the petition is scant. It contains absences as glaring as those in the MaChris case. Instead of providing detailed citations to external observations of the group as an Indian entity, petitioner devotes ten pages to its theory as to why the Abenakis of Vermont have been invisible in the records (Petition:145-154). While Criterion (a) seeks evidence past 1900, most of the examples of identification that are listed pre-date 1800 (Petition:145-146, 153). The very few items provided in the petition after 1900 are for individuals, not for a tribal entity.

In contrast, the social science record is replete with comments by external observers on the absence of Abenakis from Vermont. These materials are presented below and analyzed in light of the guidance provided by BIA decisions. For ease of manageability, the material has been divided into five time periods: 1900 to 1929; 1930 to 1947; 1948 to 1973; 1974 to 1981; 1982 to the present. The evidence demonstrates that external observers did not identify any Indian entity in northwestern Vermont from 1800 until 1974, when the present group formed. This represents a gap of nearly one hundred seventy-five years.

## 1900 to 1929

### Researchers Identify Vermont Abenaki as Tribe of the Past

The Smithsonian Institution's Bureau of American Ethnology published a *Handbook of American Indians North of Mexico* in 1907, edited by Frederick Webb Hodge. This large and authoritative study "treats all of the tribes north of Mexico, including the Eskimo."

Hodge stated the handbook's goal:

It has been the aim to give a brief description of every linguistic stock, confederacy, tribe, subtribe or tribal division and settlement known to history or even to tradition, as well as the origin and derivation of every name treated, whenever such is known... (Hodge 1907:viii).

In this work, Hodge described the history of the "Abnaki," tracing their displacement from Maine to Canada. He noted that "[t]he descendants of those who emigrated from Maine, together with remnants of other New England tribes, are now at St. Francis and Bécancour, in Quebec, where, under the name of Abnaki, they numbered 395 in 1903" (Hodge 1907:3-4).

In addition, he noted the number of Eastern Abenakis—namely the Penobscot and Passamaquoddy—currently in Maine.

As for the portion of the Western Abenaki who historically lived at Missisquoi in the eighteenth century, Hodge recognized the "Missiassik" as an historical subgroup. However, he did not see it as an entity presently in the United States at the time of his writing. He stated that it was "[a]n Algonquian tribe or body of Indians belonging to the Abnaki group, formerly living on Missisquoi r. in N. Vermont" (Hodge 1907:872). He explained that "[t]hey had a large village at the mouth of Missisquoi r. in Franklin co., on L. Champlain, but abandoned it about 1730 on account of the ravages of an epidemic, and removed to St. Francis, Quebec" (Hodge 1907:872).

Hodge's reference to the Missisquoi, or Abenaki of northwestern Vermont, in the past tense as "formerly living" in northern Vermont, is in keeping with the same observations made by Samuel Drake in 1845 and Henry Schoolcraft in 1851-1854, as well as the local history written by John B. Perry in 1863.<sup>48</sup> These characterizations of the tribe as a past entity, one that no longer exists in the area, require a negative finding on Criterion (a). The Nipmuc Nation Proposed Finding states that characterizations of a tribe as extinct as opposed to a viable contemporaneous entity would support a negative finding on Criterion (a). (BIA Nipmuc Nation (#69A) 2001:85). That is also the conclusion reached in the Muwekma case (BIA Ohlone/Costanoan Muwekma Tribe 2001:5, 9, 12). An example of inadequate evidence of this type was described by the BIA in that case:

The petitioner cites Alfred Kroeber's *Handbook of the Indians of California*, published in 1925, as an identification of the petitioning group. Kroeber denied, however, that a Costanoan group continued to exist in 1925, despite his recognition that a "few scattered individuals survive...." These individuals "of mixed tribal ancestry," he contended, had long ago "abandoned" the natives' "old habits of life" and were living "almost lost among other Indians or obscure Mexicans." In this view, the surviving Indian descendants had lost a distinct culture and any distinct settlements. Therefore, although he knew that individual descendants of the Costanoan existed, Kroeber concluded that, "The Costanoan group is extinct so far as all practical purposes are concerned." (BIA Ohlone/Costanoan Muwekma Tribe 2001:5).

Another scholar sought to describe all the Indian groups he could find in 1914. Warren K. Moorehead included a chapter on "Indians Today," in his book *The American Indian in the United States; Period 1850-1914: The Present Condition of the American Indian; His Political History and Other Topics; A Plea for Justice*. His description moved through the eastern United States as he identified groups of Indians continuing to live in tribal relations, such as the Penobscot and Passamaquoddy in Maine (Moorehead 1914:31-

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<sup>48</sup> See discussion above in section *Nineteenth Century: Travelers, Historians, and Surveyors of Indians*.

33). He found no group in Vermont large enough to mention. After describing the Indians in Maine, he wrote that “[t]o discover the next body of Indians of more than three or four hundred, we must go down South” or to New York State (Moorehead 1914:33). He noted that although the census of 1910 lists a few Indians in the eastern states, most of them “are white people in every way, save color” (Moorehead 1914:33, 35).

A notable Vermont author also wrote about Indians during this period. In *Vermont, The Green Mountain State*, Walter Hill Crockett surveyed the evidence of Indian habitation in Vermont up to 1921 (Crockett 1921:49-64). He wrote of the Indians entirely in the past tense. He acknowledged no contemporary settlement or community of Indians. Statements such as these described them as largely disappearing in the late eighteenth century:

-- “some remained until the white men settled here,”

-- fishing, hunting grounds in Sheldon “held tenaciously by [the St. Francis Indians], being yielded with great reluctance.”

While he believed “that so far as Vermont is concerned the Indian population generally has been underestimated” historically, he was not aware of any Indians community in Vermont in his day (Crockett, 1921:51, 60, 64).

One of the most well-known anthropologists, Frank G. Speck, conducted a considerable amount of research on both the Western and Eastern Abenakis. He published articles on the Eastern Abenakis in Maine (Speck 1915, 1919), and articles referring to the Western Abenakis in New Hampshire and Odanak/St. Francis, Quebec (Speck 1947). Speck researched the Abenaki language and culture and made several visits to Odanak/St. Francis

where he spoke with various Abenakis including Chief Joseph Laurent.<sup>49</sup> In one article, he described the Wabanaki group south of the St. Lawrence River by the following boundaries:

beginning with the Pigwacket of New Hampshire, extending eastward and embracing the Sakoki, Aroosaguntacook and Norridgewock, and the better known Wawenock, Penobscot, Passamoquoddy, Malecite and Micmac, with an approximate native population of some 6,000. (Speck, 1926:282).

This description did not include any to the west of New Hampshire in Vermont.

It was not for lack of searching that Speck failed to mention Abenakis in Vermont.

He was aware of Abenakis near Vermont, as shown by the fact that his papers included photographs of Abenakis at Lake George, New York, in 1952 (Speck 1952). There is additional evidence that Speck was familiar with a possible Abenaki village at Lake George, New York. A researcher in the 1950's referred to Speck's familiarity with an Abenaki woman at Lake George in a letter written to Speck's colleagues after Speck's death. The inquiry was for material regarding

an old St. Francis (Canada) Indian named Sabael (1745-1855) who settled in the Adirondacks in upstate New York. In talking with his great granddaughter, Mrs. Maud Nagazoa, I understand that Prof. Frank Speck once talked with her – I presume [sic] more about the Abenaki language. The locale of this interview might have been lake George, or Sorel in Canada. (Cadbury 2/28/1959).

These materials demonstrate Speck's knowledge of the Abenaki in Quebec, Maine, New Hampshire, and New York. A survey of his published works and indexes to his papers at the American Philosophical Society has turned up no references to a community of Abenakis in northwestern Vermont—or anywhere in Vermont. It is striking that an anthropologist who

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<sup>49</sup> Two such visits and conversations with Chief Laurent are referred to by Odanak/St. Francis Chief Joseph Laurent's son in an address to the Vermont Historical Society (Laurent 1955:187). As Chief Laurent died in 1917, these visits must have taken place before then (For Laurent's dates, see Hume 1991:104-105).

spent so much time researching the Abenakis did not mention any in Vermont in all his works.

Speck was not the only anthropologist to study the Western Abenakis during the first three decades of the twentieth century. A. Irving Hallowell also conducted research among the Abenaki at Odanak/St. Francis in Canada throughout the 1920's (Hallowell 1928:102, [biographical sketch] n.d.:1). While this article on kinship terminology discussed Abenakis at Odanak and Bécancour, as well as the Eastern Abenakis in Maine (the Penobscot), it made no mention of any Abenaki tribe in Vermont during those years (Hallowell 1928:104).

It is very significant that two anthropologists studying Abenaki language, society, and culture, over an extended period of time in the first half of the twentieth century, did not discover any Abenaki community in Vermont, or any individual Abenaki informants for their research. This failing is relevant to Criterion (a), as in the MaChris Proposed Finding in which the BIA noted the failure of student researchers to discover any reference to the MLACIT or its individual members (BIA MaChris Lower Alabama Creek Indian Tribe 1987:14).

Likewise, the Webster/Dudley Band of Chaubunagungamaug Nipmuc Indians cites the absence of that band from Frank Speck's research as a reason why Criterion (a) was not met there (BIA Webster/Dudley Band of Chaubunagungamaug Nipmuc Indians (#69B) 2001:84). In that case, Speck's interviews with one band of Indians did not turn up any mention of the Dudley/Webster group. Despite the fact that he was in the same area researching Nipmuc Indians, Speck made no visits to the Dudley/Webster descendants. This lack of identification by the renowned anthropologist weighed against a finding of acknowledgment under Criterion (a) (BIA Webster/Dudley Band of Nipmuc Indians (#69B)

2001:84). As this Response to the Petition will show, scholars searched for Abenakis in the 1950's and 1960's as well. Then, too, they found no Abenakis in Vermont or surrounding areas.

### **Federal Government Records Identify Only a Tiny Number of Individual Indians**

The first two federal censuses for the twentieth century included special enumerations of Indians. In 1900 census workers were specifically told to look for Indians, “both those on reservations and those living in family groups outside of reservation” (U.S. Bureau of the Census 1900c Census). A special form, Schedule 1, was to be used whenever a family composed mainly of Indians was found. This form recognized that Indians were frequently transient. The enumerators were required to indicate whether the Indians were living in a temporary structure such as a tent or tepee, or in a fixed permanent structure. The 1900 census indicated there were five Indians in Vermont, but none in Franklin County where the historical village of Missisquoi was located (U.S. Bureau of Census 1901:561).

There were also no Indians indicated in adjacent Grand Isle County, the one which encompasses the Lake Champlain islands. Three of the enumerated Indians were listed in Essex County on the other side of the state, bordering New Hampshire and the Connecticut River.<sup>50</sup> The other two individuals were listed in central parts of the state, Rutland and Washington counties. This lack of Indians in Vermont cannot be attributed to a general invisibility. Abenaki Indians were fully visible in areas not far away, as the 1900 federal

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<sup>50</sup> There is some evidence that Indians seen in Essex County could be from Old Town, Maine. Thomas Daniels wrote “[a]s late as 1910, Indians from Old Town, Maine traveled up the Androscoggin River to St. Johnsbury, where they gathered bark from the swamps to make dye” (Daniels 1963:13).

census for the area of Lake George, New York, indicates (U.S. Bureau of the Census 1900a, 1900b).

The 1910 census also sought out Indians for special enumeration.<sup>51</sup> As with the prior census, Franklin County does not stand out as a center of Indian habitation. To the contrary, of the 26 Indians listed in the state that year, only five were listed in Franklin County (U.S. Bureau of the Census 1922:1049). No Indians were identified in Grand Isle County. Nine are listed in the central and southern counties of the state. The largest concentration is the nine listed in Chittenden County. These tiny numbers indicate that the census takers were not aware of a group of Indians inhabiting the area of the historic village of Missisquoi. The picture painted by the 1920 census is similar. Twenty-four Indians were identified in the state, yet none resided in Franklin or Grand Isle counties (U.S. Bureau of the Census 1922:1049, Table 7). Moreover, as discussed below in *Criterion (e)*, none of the Indians identified in the censuses from 1870 to 1910 is listed as an ancestor of petitioner.

Federal census records are a standard source of external identification consulted in federal acknowledgment cases. They are considered a reliable source (BIA Duwamish Tribal Organization 2001:24). The fact that none of the ancestors of the petitioner is identified as Indian in the census records can be a major obstacle to federal acknowledgment as it was in the MaChris Proposed Finding (BIA MaChris Lower Alabama Creek Indian Tribe 1987:6).

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<sup>51</sup> Prior to 1900 there was one other special census of Indians—in 1890. In Vermont, this census listed 34 Indians not on reservations. Although the individual listings of the 1890 census were destroyed in a fire, a compilation summarizing the results of the Indian census survived. This compilation shows the counties in which those 34 Indians lived; none lived in Franklin or Grand Isle counties. The largest group, containing 13, was located in Essex County, on the eastern side of the state bordering New Hampshire. Another 12 were located in central or southern counties. That leaves 8 listed in Chittenden County, and 1 in Orleans between Franklin and Essex (U.S. Bureau of the Census 1894:602).

The instant petitioner, the St. Francis/Sokoki Band of Abenakis, concedes that the census did not list its ancestors as Indian (Petition:145).

One source that the BIA has used in evaluating petitions for acknowledgment is military records (BIA MaChris Lower Alabama Creek Indian Tribe 1987:12). Draft registration forms for World War I were located for ancestors of the petitioner and have been examined for indications of Indian identity. Twenty-two such registration forms were examined; not a single one listed the individual as Indian. These are included in the exhibits filed with this Response. There is no reason to believe that individuals would be inclined to hide their Indian identity at the time these forms were filled out in 1917 and 1918. If, as the petitioner contends, the Eugenics Survey created an atmosphere of distrust and fear, it still would not affect these registrations, which pre-dated the survey by nearly a decade.

### **Records of the Vermont Eugenics Survey Do Not Identify Any Abenakis**

One characteristic of the evidence in the Muwekma case that occurs in the instant petition is the identification of the Indians in the region as belonging to another Indian tribe or group. In order to be federally acknowledged and meet the requirements of Criterion (a), the ancestors of the petitioning group need to be identified by the correct tribal name. This is to make sure they have not broken off from another tribe that is otherwise recognized, or that they are not a newly formed group that did not exist historically. In the Muwekma case, there were various Indian settlements in the area, so it was important to determine to which group petitioner belonged. Since the evidence in that case associated petitioner with another tribe—not the historic Verona or Muwekma Indians—the balance weighed against acknowledgment on Criterion (a). (BIA Ohlone/Costanoan Muwekma Tribe 2001:2-4).

The Eugenics Survey of Vermont contains similar evidence. Buried amongst the thousands of pages of material in that survey are a few references to possible Indian ancestry of a few individuals. However, not a single one identifies an Indian as Abenaki. Furthermore, only a few of these individuals are even ancestors of the petitioner according to the genealogical material submitted to the BIA in 1995. Family Descendancy Charts. Specifically, the references to Indians in the Eugenics Survey who are listed by petitioner as ancestors are as follows:<sup>52</sup>

- Antoine Phillips “Matilda Leopard Phillips (Young Matilda) ... says that Old Antoine had Indian blood and had something to do with the Kickapoo Indians.<sup>53</sup> (Agent H.E.A. thinks that the above statement is probably rather doubtful except for the fact that Old Antoine did have Indian blood and probably was related to some of the inhabitants of an Indian reservation in southeastern Canada.[.]”
- Peter Phillips listed in Eugenics Survey as a son of Antoine. “Peter Phillips the first was part Indian, part French, and part Negro. On his death certificate he is recorded as colored. He was very decidedly Negroid in appearance. [Police] Chief Russell of Burlington remembers Old Peter Phillips who looked like an Indian.”
- Alexander Bisette listed in Eugenics Survey as son of Julia Phillips and

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<sup>52</sup> The relevant pages from the Survey are included in the Exhibits (Eugenics Survey of Vermont [1926-1930]a and [1926-1930]b).

<sup>53</sup> There is other evidence of some people of Kickapoo descent in Vermont (Needham 1965).

Andrew Bisette; Julia is listed as a daughter of Antoine Phillips. When he was admitted to the Vermont State Hospital, “[h]e said that his mother was Indian.”

There are two other people whose descriptions in the Eugenics Survey include references to Indian heritage, but they did not have any descendants among petitioner’s members:

- Delia Bone listed in Eugenics Survey as wife of Peter Phillips. She “was part Indian and part French. She came from an Indian Reservation Caughnawagha, sixteen miles from Montreal.” According to the Phillips Family Descendancy Chart, she married Peter Phillips (individual #2). No children are listed, thus her line does not continue to today’s petitioner.
- George Peters “The Peterses were half French and half Indian.” According to the Phillips Family Descendancy Chart, he is shown as marrying Jane Virginia Phillips (individual #7). No children are listed; his line does not continue to today’s petitioner.

Lastly, one other individual is mentioned as having some Indian blood, but he does not show up in petitioner’s Family Descendancy Charts at all:

- George Louis Jerome “The Jeromes were part French and part Indian, and probably part negro.”

As for other ancestors of the petitioner who were profiled by the Eugenics Survey, most of them are described as French. The following are notable examples:

- Nezer St. Francis

St. Francis Family Descendancy Chart (individual #5).

- Clara Hoague

Hoague Family Descendancy Chart (individual #11)

- Joseph Hoague

Columb Family Descendancy Chart (individual #54)

- Emeline/Minnie Vincelette

Married Joseph Hoague.

One is described in the survey as Irish:

- William Morits

Married Mary Zelda Hoague. John Morits Family Descendancy Chart  
(individual #16)

### **Newspapers Fail to Identify Any Abenaki Tribe in Vermont**

The December 4, 1913, issue of the *Swanton Courier* newspaper ran three articles related to, or referring to, Indians. All spoke of the Indians as a past feature of Swanton; they made no mention of any continuity to any existing community of people in the area. The first article, on the front page of the paper, was entitled “The Indians.” It discussed the relics that had been found in Franklin and Grand Isle Counties and went on to give a concise history of Indian occupation of the area. The last sighting of Indians was given in the following passage:

[After the treaty of 1763] The Indians, who had sided with the French in the wars of the past, were now left in the hands of their enemy [the English], and their gradual withdrawal from this territory followed. They continued to occupy, however, up to at least as late as 1800, and it is said by old

inhabitants, that they were in the habit of drifting back in bands of eight or ten families to favorite camping grounds to spend part of the year up to as late as 1835 or 1840. (*Swanton Courier* 12/4/1913a).

An article on page 15 of the paper gave a detailed description of Indian relics found near Swanton Village, but again made no mention of any present-day Indian inhabitants. The town was obviously proud of its Indian history. The fact that “Swanton is rich in Indian history and is the mecca for relic hunters” was listed alongside the fact that it boasted four railroads and an electric streetcar line, a live Board of Trade, and several thriving businesses (*Swanton Courier* 12/4/1913b). These were all included on a list of Swanton’s notable features in a column meant to boost support for the town. (*Swanton Courier* 12/4/1913c). These articles do not provide evidence to satisfy Criterion (a), rather they support a negative finding on that issue (BIA Ohlone/Costanoan Muwekma Tribe 2001:5; BIA Nipmuc Nation (#69A) 2001:85).

The petitioner does not cite any newspaper articles that give contemporary twentieth century descriptions of Indians in Vermont during this time period. In fact, the petitioner admits that its ancestors were not identified as Indians in the local press until the 1970’s (Petition:154).

### **Swanton Birth Records**

The only evidence of external identification cited in the petition for 1900 to 1929 is a few birth records in Swanton that petitioner claims indicate the individuals are Indian or Indian-White (Petition:147). Examination of the actual records does not confirm this. Most of the records actually indicate no race or “White” for the children. These are analyzed in detail in the section *Criterion (e): Petitioner’s Evidence of Indian Births is Contradicted by*

*Original Records.* Copies of the birth records are included in the Exhibits (Swanton, Vermont, Town Clerk 1904-1920). Furthermore, petitioner states the indications of Indian race in these listings (to the extent there are any) are attributable to an Indian midwife (Petition:147). This presents two problems as evidence of identification as an Indian entity. The first is that these birth records are not identifications of an Indian entity; they are identifications of individuals. As such they represent only scattered identification of separate persons during a very small window of time—a time that is otherwise devoid of external identifications. This is insufficient evidence for Criterion (a) (BIA Chinook Indian Tribe 2002:46205). Secondly, if the midwife was Indian, as the petition asserts, then these records are not identification by outsiders.

## **1930 to 1947**

### **External Observations Silent on Existence of Any Contemporary Abenaki Tribe**

In 1934, Gladys Tantaquidgeon presented her survey of New England Indians to the Commissioner of Indian Affairs at the Department of the Interior. She identified nine tribes in the New England states of Maine, Massachusetts, Connecticut, and Rhode Island. Her report does not mention a single group in Vermont (Tantaquidgeon 1934).

The 1930's was also the time period during which Elin Anderson conducted her research on ethnic groups in Burlington (Anderson 1937). Anderson's primary tool was a set of questions that were posed orally to individuals in Burlington. During the interviews, the surveyors asked for the respondents' perceptions of fourteen other ethnic groups: French Canadians, Irish, Americans/Yankees, English Canadians, Italians, Jews, Germans, Syrians, French, Scottish, Greeks, English, Scandinavians, Chinese, and Negroes (Eugenics Survey of

Vermont [1932-1936]). There was no surveying of attitudes toward Abenaki Indians or Native Americans of any kind. This shows they were not identified by outsiders as an entity in the Burlington area in the 1930's.

The 1930 federal censuses identified 36 Indians in the State of Vermont, the largest number since the census had begun. However, only three Indian individuals were identified in Franklin County, and none in Grand Isle County (U.S. Bureau of the Census 1932:1131, Table 17). As with previous census reports, no central grouping of Indians emerged from the census. The historic area of Missisquoi and its surroundings was not viewed as an Indian village or congregating place for Indian inhabitants. In 1940, the number of Indians identified by the census in the state dropped to 16 (U.S. Bureau of the Census, 1943:90, Table 6).

Two documents reveal the absence of any Indian identity in the 1940's. One is the chronology of Vermont prepared by the Vermont Writers' Project of the Works Progress Administration in 1941. It included the following entry for 1856: "Last native Indians in state leave Bellows Falls<sup>54</sup> for Canada. November" (Richmond 2/10/1941; *see also* Works Progress Administration 1937:83-84).

The other is a series of articles entitled "Growing Up in Vermont" published in the *Swanton Courier* in 1941 and 1942. These articles mentioned some of the petitioner's ancestors by name but included no designation of them as Abenaki or even as Indian. The series was written by Walter Scott at age 74 and described Swanton and its inhabitants when he was a child growing up there (*Swanton Courier* 1941-1942). He mentioned the following individuals from petitioner's genealogy:

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<sup>54</sup> Bellows Falls is a village in the town of Rockingham in the southeastern portion of the state along the Connecticut River.

Ancestor Named in Article

Date of Article

- his next door neighbors, Dannie and Mattie Colomb August 14, 1941
- William Morits, a beggar October 23, 1941
- Duck Brow, who worked in the meat market October 30, 1941
- Salina Freemore, aunt of William Greenough,  
posed as model for a marble statue; November 13, 1941

Scott did not identify a single one of these individuals as Indian. However, he did describe Louis Button as “part Indian,” though there does not appear to be a Button family in the petitioner’s genealogical charts (Compare *Swanton Courier* 1/22/1942 with petitioner’s Family Descendancy Charts). The existence of news articles naming petitioner’s ancestors, but not identifying them as Indian do not satisfy Criterion (a) (BIA Webster/Dudley Band of Chaubunagungamaug Nipmuc Indians (#69B) 2001:82, Ohlone/Costanoan Muwekma Tribe 2001:2). To the contrary, this evidence confirms these people were not viewed as Indian by the rest of the community.

**1948 to 1973**

**Researchers Failed to Discover Any Contemporary Vermont Abenaki Tribe**

As with the previous time periods, there are no external identifications of Abenaki in Vermont during the twenty-five year period from 1948 to 1973. Three anthropological surveys were published during this period and none identifies a tribe of Abenaki Indians in Vermont.

The first was William Harlen Gilbert, Jr.’s “Surviving Indian Groups of the Eastern United States” in the *Annual Report of the Smithsonian Institution* (1948). This report was

prepared for the “purpose of indicating the extent to which Indian blood still remains noticeable in our eastern States population” (Gilbert 1948:407). It was based on an analysis of the 1930 federal census, which could only be favorable to Vermont Indians since that census listed more Indians than any previous one (Gilbert 1948:407; *see also* Table 1 above). Gilbert addressed each of the eastern states individually and wrote: “No surviving social groups of Indians are recorded for Vermont, although the census records a few scattered individuals” (Gilbert 1948:409). While Gilbert noted that the census numbers are often understated, he did not reject them wholesale. He used the figures in conjunction with numerous anthropological and historical works cited in his bibliography (Gilbert 1948:436-38). He was aware of unofficial estimates of Indian populations as well (Gilbert 1948:407). Using all these sources, Gilbert still concluded there were no Indian tribes in Vermont.

In assessing evidence under Criterion (a), the BIA has rejected scenarios that depict only scattered individual Indians such as that shown here. The evidence necessary to satisfy Criterion (a) would identify an Indian entity viewed by outside observers as a coherent Indian group (BIA Ohlone/Costanoan Muwekma Tribe 2001:12).

Four years after Gilbert’s report the Smithsonian’s Bureau of American Ethnology published John Swanton’s *The Indian Tribes of North America* (1952). This tome was a comprehensive compilation of information on all the known Indian groups in North America. In it Swanton recognized the historic Abenaki group in Vermont, stating that “[a]n Abnaki [sic] band known as the Missiassik was at one time settled on Missisquoi River in Franklin county” (Swanton 1952:18). He said that the main body of Abenakis was located in Maine, with the Mississiak representing a “late intrusion” into Vermont (Swanton 1952:13). He observed that all of them “finally withdrew to Canada where they were settled at Bécancour

and Sillery, and later at St. Francis, along with other refugee tribes from the south” (Swanton 1952:14-15). This description depicted an historic tribe that had long since ceased to exist in Vermont by the 1950’s. Such evidence suggests a negative finding on Criterion (a). (BIA Ohlone/Costanoan Muwekma Tribe 2001:5).

In the following decade, another team of anthropologists from the Smithsonian sought to fill in gaps in the knowledge of Indian groups by focusing on the eastern states—just as Gladys Tantaquidgeon and William Gilbert had before them. This team was comprised of William Sturtevant and Samuel Stanley. In a 1968 article in the *Indian Historian*, they described the challenge of tracking down non-urban Indians in the eastern states due to the fact that they never had a special relationship with the federal government like the tribes west of the Mississippi (Sturtevant & Stanley 1968).

Sturtevant and Stanley were well aware of the difficulties they faced in undertaking this study. They pointed out that:

It is much more difficult in these states than elsewhere to define the term “Indian” and to identify Indians.... At one extreme are communities which fit all the usual criteria of Indianness: self-identification, distinct cultural characteristics including the survival of an Indian language among at least a “conservative” nucleus of the group, obvious Indian biological ancestry (at least among a significant proportion of the population), existence as a separate well-bounded rural community, and a tradition of derivation from a historic tribe which is accepted by all observers—by lay members of both Indian and non-Indian communities, and by scholars. At the other extreme are a few groups who are rural social isolates suffering from discrimination by the majority of their neighbors, but not accepted as being Indians by these neighbors and of whom it is not known by scholars whether they themselves claim Indian ancestry, nor whether they exhibit indentifiable [sic] Indian biological characteristics.

Between these extremes are many groups with intermediate characteristics. (Sturtevant & Stanley 1968:15-16).

The authors then proceeded to present a table summarizing available data on “Eastern Indian or possibly Indian communities” (Sturtevant & Stanley 1968:17).

The table may very well overstate some claims to Indian identity and understate others. However, the authors' purpose was to identify places and people who might be Indian and encourage field research to assist in the identification that the Indians deserve (Sturtevant & Stanley 1968:17).

Given this attempt at thoroughness and the authors' intent to identify missing groups, it is noteworthy that they write that "Vermont and New Hampshire are in this region but have no known Indian communities" (Sturtevant & Stanley 1968:15).

Their failure to locate any Indian groups in Vermont cannot be explained by lack of attention to small groups. Their chart showed a group of 25 Abenakis in New York State (Sturtevant & Stanley 1968:18). If there were really hundreds Abenakis in Franklin County, as the petitioner has claimed, they should have appeared here.

When anthropologists and ethnologists actively seek Indians in Vermont and fail to uncover any tribal entities, the scales tip against fulfillment of Criterion (a). (BIA Webster/Dudley Band of Chaubunagungamaug Nipmuc Indians (#69B) 2001:84, BIA MaChris Lower Alabama Creek Indian Tribe 1987:14).

In addition to anthropologists on the national scene looking for Indians, there were local researchers addressing the task. The person who did the most to uncover information about Abenaki history in Vermont during the 1950's was John Huden. Huden held a doctorate from Yale University and was an educator who served as president of Castleton Teachers' College and Professor in Education at the University of Vermont. In the 1950's he conducted research on Indians in Vermont (Vermont Historical Society 11/1959). Huden's article "Indians in Vermont—Present and Past," revealed his knowledge of the presence of Indians in the Vermont of his day. He wrote:

Very few Indians make their homes in Vermont today, Anno Domini 1955. Down Charlotte way, at Thompson's Point, some twenty-odd Abnakis lived up to about 1939; now only William and Marion Obum-swam, an aging brother-sister team, linger there in the little cottage their father built when he migrated from Canada back in Teddy Roosevelt's administration... They are probably the last Indian-speaking Indians in the Champlain valley.

A hasty survey of Lake Champlain and Connecticut River townships has revealed no Indian residents other than the Charlotte basketweavers. (Huden 1955).

Huden frequently asked people at public meetings and social gatherings, "How many here have any Indian blood?" From these "spot checks and other evidence obtained in follow-up interviews" he learned of people in Vermont with "strains of Abnaki [sic], Montauk, Mohegan, Pequot, Wampanoag, Penacook, Narragansett or other tribal sanguinary fluid" (Huden 1955:25). However, he did not discover any active Indian communities through these conversations. While he wrote about individuals with varying amounts of Indian ancestry and knowledge of their background; he observed no tribal entities. This undercuts any positive finding on Criterion (a). (BIA Ohlone/Costanoan Muwekma Tribe 2001:12).

Huden's interest in Indians and his role as a board member of the Vermont Historical Society led to Stephen Laurent's address to the Society in 1955. Stephen Laurent was introduced as the "hereditary chief of the Abenakis" of Odanak/St. Francis, as he was the son of Chief Joseph Laurent (Laurent 1955). Laurent was born in 1909 at Odanak, and came to live year-round in northern New Hampshire in 1940 (*Boston Globe* 6/2/2001). In Laurent's Vermont address, he made no mention of any Indian communities existing in Vermont at that time.

Huden's further studies of Abenaki place names and history led him to conclude that "our Indians fled to Canada," from Vermont around 1760 (Huden 1956a:23-24). He

mentioned that a few “trickled back,” but was aware of no concentration of Indians in the state after that. He continued to search for information, putting out requests such as this one at the end of his article:

If you have any information of any kind, traditional, legendary, or whatever it may be, which might assist us and Dr. Huden in unraveling the confusion and lack of knowledge about the Indian story in Vermont, Dr. Huden will welcome it at this address...(Huden 1956a:25).

There was no indication in his later publications that he uncovered any tribe of Abenakis existing in Vermont in the 1950's. The two-part article that followed on Joseph Gill, “The White Chief of the St. Francis Abnakis—Some Aspects of Border Warfare, 1690-1790” contained acknowledgments of scholars, Abenaki speakers, and resources in Canada—not Vermont (Huden 1956c, 1956d:347). Huden's summary of his Abenaki research efforts, written in 1957, recounted many discoveries of material and sources, but again contained no mention of any contemporary Abenakis in Vermont—save the Obomsawins (Huden 1957). His list of “Indian Groups in Vermont,” published in 1958, mentioned none after 1790 (Huden 1958).

John Huden's writings on Abenakis were noticed by Gordon Day, the man who would later become the foremost authority on the Western Abenakis. It was newspaper stories about Huden's research and the address of Stephen Laurent to the Vermont Historical Society that led Day to meet William and Marian Obomsawin and Stephen Laurent in 1955 (Day 1948-1973). These people, and their relatives at Odanak/St. Francis, provided Day with material for study for the next three decades. The details of Day's journey to find Abenaki Indians are described in the meticulous journal that he kept from 1948 to 1973. This manuscript records dozens of visits to the homes of Abenakis in Quebec, New Hampshire, Maine, New York, and Vermont. It tells who accompanied him, how many hours of audio

tape he recorded, and whom the informants suggested he contact next. In all the pages of the journal, there is not a single reference to any Abenakis around Swanton. He never identified the presence of a contemporary Abenaki tribe in Vermont in the quarter century he kept that journal. In fact, the only Abenakis in Vermont whom Day notes are William and Marian Obomsawin in Charlotte and their sister Elvine Royce in Montpelier (Day 1948-1973:9).

The fact that Day was unaware of any tribe of Abenakis in the state is solid evidence that there was none. If anyone was going to find Abenaki Indians in the 1950's and 1960's in Vermont, it would be Gordon Day. He was born and raised in Vermont, lived nearby in New Hampshire, and had dedicated himself "to saving Abenaki culture from oblivion." (Foster & Cowan 1998:3, see Foster & Cowan's "Introduction" for a lengthy biographical essay about Gordon Day). Day seemed to strike up conversations with anyone who knew anything about Abenaki Indians, as this entry illustrates:

Nov. 6 [1961]            Left Contoocook by car and got stranded in N. Woodstock, N.H., all day and overnight with starter trouble. The garage man's son, Joe Huot, remembers Robert Nolet<sup>55</sup> who was killed by a car in the '40's here and knew his son Bob, who returned to work at Indian Head a summer or two ago. Also a daughter, Bernadette. (Day 1948-1973:65).

In light of this, it is most remarkable that we find the following entries:

July 7 [1960]            Drove thru "The Islands".<sup>56</sup> Could not identify just where Simon's Sandbar village was. Figured Missisquoi village was at falls at Swanton. Did not investigate Maquam for cranberry.

July 8 [1961]            Drove to Swanton, Vt. for week's vacation.

July 10                    We visited the site of the monument established on the old village site in 1909 and to Highgate Springs.

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<sup>55</sup> Robert Nolet was a member of the Nolet family from Odanak (Day 1948-1973:17-20).

<sup>56</sup> This refers to Lake Champlain Islands, which comprise Grand Isle County.

July 14 Viewed village site from other side of river, just opposite Wildlife Service building.

July 22 Visited Alburg Springs. (Day 1948-1973:36, 61).

In these entries there is not a whisper of evidence of present-day Indians in Franklin or Grand Isle counties (Day 1948-1973:58 mentioning stops at Alburgh, St. Jean, and Caughnawagha).

A review of Day's publications during these years also discloses no discovery of any Abenaki Indian group in Vermont during those years. In his 1965 article, "The Indian Occupation of Vermont," he disputed the assertion, made by some writers, that there was no Indian occupation of Vermont (Day 1965). He prompted the Vermont readers of his article to share his questioning of those writers by drawing on their local knowledge:

If these writers were correct, there would be little for us to say here, but I suspect that their statements do not sound quite right to you readers of Vermont history. For one thing, you are aware of archaeological remains testifying to early Indian occupation, and for another, you know that the historical record is quite clear about the presence of Indians at Missisquoi, on the upper Connecticut River, and at Lake Memphremagog just before the Revolution. (Day 1965:366).

Notably, he did not cite the existence of any contemporary Abenaki group in Vermont descended from the historic tribe as evidence. Had he known of such a group, it would have been well to include it in this essay.

Two facts from Day's experience speaks volumes about the non-existence of any Indian entity in Franklin and Grand Isle counties from 1948 to 1973. The first is that Day spent years visiting and conversing with Abenakis in Odanak and at Thompson's Point (Charlotte, Vt.) but was never told about a community of Abenakis in northwestern Vermont. The second is that he traveled to Swanton and Alburg to locate the historic village and did not discover any contemporary Abenakis. These absences are even more powerful than the

inability of student researchers to find the MaChris (BIA MaChris Lower Alabama Creek Indian Tribe 1987:14). Given the number of years Day devoted to his study and his frequent presence in Vermont, it is even more telling than Frank Speck's lack of awareness of the Webster/Dudley Nipmucs (BIA Webster/Dudley Band of Chaubunagungamaug Nipmuc Indians (#69B) 2001:84). In both the MaChris and Nipmuc cases the failure of these curious and diligent ethnographers to discover the tribe belied their very existence.

Day's next article about the Abenakis gives further insight into his understanding of the present-day location of the Missisquoi. His research led him to the following conclusion:

Saint Francis has been regarded as a melting pot, but the significant fact about it is that, despite its speckled history, it is now essentially composed of descendents of families from Lake Champlain. The Missisquoi band was the last sizeable band to settle at Saint Francis, and it came into a village considerably attenuated by wars and epidemics. As a result, about 85% of the family names in the band over the last 150 years had their origins in the Lake Champlain region. (Day 1971:119).

Two years later, in 1973, Day gave an address to the Northeast Anthropological Association meeting in Burlington, Vermont. He chose as his topic the "abandoned Abenaki Indian village of Missisquoi, partly out of deference to our Vermont hosts" (Day 1973). He did not describe Missisquoi as a place currently inhabited by Abenaki Indians. He traced its history, noting "the departure of the bulk of the village about 1775" (Day 1973:55).

However, he explained that the ethnographer of the 1970's could still learn about Missisquoi culture from the descendants of those eighteenth-century villagers. The key is to go to Odanak/St. Francis, he said. It is "through the memory and traditions of a large element of the [Odanak/]St. Francis band, we have knowledge of Missisquoi ethnography in fair detail" (Day 1973:56). It is at St. Francis in Quebec that "one can still hear the language which was spoken at Missisquoi. One can hear trickster and transformer stories, whose

setting is the Champlain Valley” (Day 1973:56). Day did not suggest that ethnographers consult any Abenaki group in northwestern Vermont; none of his research had ever indicated the existence of such a group.<sup>57</sup>

The BIA decision in the Southeastern Cherokee Confederacy case is instructive here. Federal acknowledgment was denied in that case in part due to the fact that the petitioner, the Southeastern Cherokee Confederacy of Georgia, was not the “historical and legal successor to the Cherokee Nation,” as claimed; rather, the actual successor existed continuously in Oklahoma and North Carolina separate and apart from petitioner (BIA Southeastern Cherokee Confederacy 1985a:4). This bears on the question of continuity in identification of the tribe by external observers. The identification of an Indian entity is not continuous if the petitioner represents a new group that emerged late on the scene, when another group has a clear line of connection to the historic tribe.

Such may very well be the case with the Sokoki/St. Francis Abenaki petitioner here. Gordon Day and others have stated that the historic Missisquoi were absorbed into the Abenaki melting pot at Odanak/St. Francis (Day 1971:119; Calloway 1986:221). Moreover, Day proved that the culture and language of Odanak/St. Francis is traceable back to these Lake Champlain immigrants (Day, 1973:55-56; 1981a:231). His thorough research, more probing and expansive than anyone else’s on the Western Abenakis, concluded that the Abenakis at Odanak/St. Francis in the mid-twentieth century were the current successors of the Missisquois. Such statements, backed as they are by Day’s two decades of ethnographic research, leave no room for a claim of historic continuity by the petitioner who only appeared to outsiders as an entity in the mid-1970’s.

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<sup>57</sup> Day continued his research and writing into the 1980’s. Those writings are discussed below.

A few other scholars also wrote about Indians in Vermont during the 1960's. One was Thomas Daniels. Born and raised in Vermont, part Chippewa and Sioux, this Fish and Game Warden was a repository of a wealth of knowledge about prehistoric culture in Vermont (Daniels 1963:7-9, 59-61). In his treatise, he described what he learned from over forty years of excavating more than seventy-five Indian archaeological sites in Vermont. He did not once mention any interactions with Abenaki individuals or groups in Vermont. Yet, it appears he would have welcomed an opportunity to learn from such people, had they existed. He wrote of visiting the Penobscot Indians at Old Town and Perry, Maine, to learn from them how some of the tools he found were used (Daniels 1963:10). Writing specifically about the Missisquoi River valley, he affirmed that "the last Indians who lived here were the Abnakis, St. Francis and Micmacs" (Daniels 1963:14). He was not acquainted with any who lived there at the time of his explorations or writing.

Expressing his debt to both Daniels and Huden, Elbridge Colby documented his own research on Indian place names (Colby ca.1964). Colby had been a Captain in the U.S. Army, Professor of Journalism at the University of Vermont from 1933 to 1938, and later was head of the Journalism Department at George Washington University.<sup>58</sup> (Colby 2001, Vermont Historical Society 1968). Even while living in Washington, D.C., he spent his summers at Thompson's Point, in Charlotte, Vermont (Vermont Historical Society 1968).

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<sup>58</sup> Colby's sensitivity to discrimination of minority groups is demonstrated by the following incident. In 1925 he distinguished himself, and damaged his military career, by denouncing the acquittal of the murderer of a black soldier who was shot upon refusing to step off a sidewalk to let a white man pass (Colby 2001).

Colby's 1960's manuscript<sup>59</sup> supplied the meaning of Indian place names that one can find on "a modern road map ...easily at hand at any gasoline filling station" (Colby ca.1964:3). As he guided the reader on a tour of the state, he did not point out a single Indian group then living in Vermont, although he mentioned one individual Indian who "only recently lived" in southern Vermont, almost on the Massachusetts line (Colby ca.1964:29).

In the section on the Missisquoi River he wrote:

At its mouth, through most of the 1700s, there stood a very important Indian village called "Missisiasuk" now disappeared. There the "people of the great grassy meadows" lived, but both the town and the people are gone. (Colby ca.1964:19).

Yet again, we have a Vermont researcher with a great interest in Indian culture expressing no knowledge of any Abenaki group in northwestern Vermont, or anywhere in Vermont, in the 1960's.

Furthermore, Colby's survey reminds us how important it is to confirm the tribal identity of Indians who one does encounter in the state. As the variety of Indian place names reveals, Vermont has historically been traveled and lived in by Indians from many places and tribes. He summarized the information found by Huden in his analysis of place names on historic maps, including names no longer in use in the 1960's. While there were over 100 place names from the Abenaki language, there were also 43 Mohawk, 14 Mahican, and 15 Natick place names (Colby ca.1964:30).

Two Canadian authors wrote about the Abenakis during the 1960's. One was W.E. Greening who wrote an article about Odanak/St. Francis for the *Canadian Geographical Journal*. This journal is a publication of the Royal Canadian Geographical Society; it falls

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<sup>59</sup> Although the manuscript is undated, the author refers to Daniels' *Vermont Indians* (1963) and Huden's *Indian Place Names in New England* (1962) as "a pair of books, recently printed in this decade" (Colby ca.1964:2).

somewhere between popular press and erudite scholarship. In his article, Greening recounted the history of the Abenaki nation of Canada, covering both its New England and Canadian phases. As he brought his story to the present, he remarked that “[t]he only other Abenaki settlements in North America today are one near Old Town, Maine, and one at Bécancour, [Quebec]” (Greening 1966). He mentioned no Abenaki group in Vermont.

The second Canadian author writing in the 1960’s was a true scholar who contributed greatly to the understanding of Abenaki history and culture. This was Father Thomas-M. Charland. His volume *Histoire des Abénakis d’Odanak* was published in 1964. One of his goals was to expand on the *Histoire des Abénakis* written a hundred years earlier by fellow French Canadian, the priest Joseph-Anselme Maurault (Charland 1964:7). Charland was well-aware of the connection between Odanak/St. Francois and Missisquoi. One of the things he wanted to include in his work, which Maurault had left out, was the eighteenth century history of the “exodus of the Abenakis to the Missisquoi River where their establishment lasted more than 30 years” (Charland 1964:7 translated from the French). Among Charland’s sources were conversations with Abenakis living at Odanak from the 1940’s to 1960’s. (Charland 1964:8). He told the history of the Abenakis up to the 1950’s (Charland 1964:338, 340). Though he commented on the dispersal of Abenakis from Odanak to other parts of Canada and the United States, he never mentioned the existence of any Abenaki tribal community in Vermont in the twentieth century (Charland 1964:341).

### **Other Material Attests to Absence of Abenaki Tribe From Vermont**

There are two other sources that may be consulted during the 1948 to 1973 time period for views of Indians. The first are the three federal censuses. Like those that

preceded it, the 1950 census showed very few Indians in the state—only 30 (U.S. Bureau of the Census 1952:14, Table 14; 41, Table 47). The 1960 census showed a significant increase—but not in the Missisquoi region. The total Indian population that year was identified as 57. However, only 1 individual was identified in Franklin County, and none was found in Grand Isle County. The larger Indian populations were in the two southeastern counties of Windham and Windsor with 15 and 17 each (U.S. Bureau of the Census 1961:13, Table 15; 38, Table 28).

In 1970, the census showed a major increase in the Indian population. The statewide total jumped from 57 to 229 in one decade (U.S. Bureau of the Census 1973:54, Table 34; 61, Table 38). These figures may reflect a new consciousness of Vermonters' Indian ancestors. It is striking, however, that the large increase in reporting did not reveal a concentration of Indians in Franklin or Grand Isle Counties. Once again, it was the southern counties, joined by those in the central region of the state, which showed the sudden increase. Only 9 Indians were identified in Franklin County, and only 1 in Grand Isle (U.S. Bureau of the Census, 1973:Table 34). This seems to belie the contention that there was a thriving Abenaki tribe living in Swanton throughout the twentieth century (*See* Table 1 above).

The other source of information on Abenakis in Vermont in the 1960's is a short essay written by Mrs. Ellsworth Royce in 1969 entitled "The Last of the Abenakis in Vermont" (Royce 1969). Mrs. Royce was a white woman who married the son of Elvine Obomsawin Royce. Her husband's aunt and uncle were William and Marion Obomsawin of Thompson's Point, Charlotte, Vermont, who were Gordon Day and John Huden's friends and informants in their research (Royce 1969:1, Day 1948-1973:1-2, 1981a:231; Huden 1955:25). Her husband's grandfather was Simon Obomsawin, who moved to Vermont in the

first decade of the twentieth century (Huden 1955:25). Although she was not totally an outside observer of the Abenakis, she did not appear to have adopted any Indian ways herself.

The significance of her essay is its description, or lack thereof, of the Indian community of which the Obomsawins were a part. The other Indians who were mentioned in the essay lived at Trois Rivières, Quebec; Intervale, New Hampshire; and Albany, New York (Royce 1969:1). The latter seemed to visit frequently, as illustrated by this passage:

When I visited Thompson's Point with my husband and children there were always many Indians from Albany, New York[,] whose wives and children stayed there through the week and their husbands came weekends. (Royce 1969:2).

There was not a single mention of Abenakis farther north on Lake Champlain, in Franklin County, or even anywhere else in Vermont. In the 1960's it appeared that the Obomsawin family was an isolated family, not associated with any larger tribe of Abenaki in the state. Their only connections to other Indian families were outside the state, thus suggesting there was no Abenaki tribe in Vermont with which they could associate. Similar evidence worked against satisfaction of Criterion (a) in the Dudley/Webster Nipmuc case (BIA Dudley/Webster Band of Chaubunagungamaug Nipmuc Indians (#69B) 2001:83). It weighs against Criterion (a) here as well.

## **1974 to 1981**

### **External Observations**

During the mid-1970's a group of individuals came together and created the Abenaki Tribal Council and the Abenaki Self-Help Association, Inc. As the petitioner itself admits, this was an attempt to "re-create" the community of Indians that had lived in Franklin County

two hundred years earlier (Petition Addendum:126). The new organization has been described by Calloway and Moody as the “reconstituted Abenaki band” (Calloway 1990b:xvi, *see also* Moody 4/24/1976).

The timing of the creation of the new Tribal Council is significant, just as it was in the Southeastern Cherokee Confederacy case. Each arose “during a time period—the 1970’s—which saw the rise of both a renewed national interest in Indian identity and protests by militant Indian organizations” (BIA Southeastern Cherokee Confederacy 1985a:15). This was also a time in America in which “imposters trying to claim a distant relationship to an Indian in hopes of cashing in on new laws designed to help economically depressed Indian tribes” pushed themselves forward into the limelight. These Indian “wanna-bes,” as the Native Americans call them, muddied the waters of tribal identification (Benedict 2000:59).

This coincidence in the emergency of the Abenakis in Vermont sheds some doubt on the true continuity of the newly formed organization with the historical tribe. The federal regulations governing tribal acknowledgment address this phenomenon. They do not permit “groups formed in recent times” to be acknowledged (56 Fed. Reg. 47320, 47321). In fact, Criterion (a) is “intended to exclude from acknowledgment those entities which have only recently been identified as being Indian” (59 Fed. Reg. 9280, 9286).

The emergence of this new group claiming to be Abenaki Indians came as a surprise to many people. John Moody admitted that few, if any, whites knew of the Vermont Abenaki community until 1976 (Moody 1979). He conceded that even in the 1970’s, “Most Abenakis from Odanak, even those presently living in New Hampshire and Vermont, had no idea an Abenaki community of *any* size still existed at Missisquoi” (Moody 1979:68, emphasis in original). Likewise the appearance of the Tribal Council was news to Vermont

anthropologist William Haviland.<sup>60</sup> He sent off a quick inquiry to Gordon Day after seeing an article about the Abenakis in Vermont in a publication of the Native American Solidarity Committee in 1976. He wrote as follows:

I just learned about the enclosed the other day. Do you know anything about this group? Their figure of 1500 Abenaki in Vermont seems high, to say the least. We are trying to find out more about them. (Haviland 4/22/1976).

We do not know what Day said in reply since it appears he responded by telephone.

However, a few years later Day referred to these statements as “propaganda” (Day 4/27/1979).

The newly formed Abenaki Tribal Council also obtained short-lived state recognition of a sort, through an Executive Order issued by Governor Thomas Salmon (Salmon 11/24/1976). Governor Salmon’s successor, Governor Richard Snelling, revoked the order a mere two months later (Snelling 1/28/1977). Since then the State of Vermont has never recognized the Abenakis as a tribe. The Executive Order issued by Governor Salmon was based on the report of Jane Baker, a consultant on Abenaki Indian Claims. She conducted “three months of intensive but obviously limited study,” based extensively on interviews with members of the Abenaki Tribal Council (Baker 1976).

Despite this sudden new activity and the adoption of the Abenaki name by these individuals, scholars continued to believe there was no Abenaki tribe in Vermont that had descended from the historic Abenaki community at Missisquoi. One researcher who conducted an extensive survey of Indian groups in the eastern United States published his

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<sup>60</sup> Haviland had begun studying the archeology and anthropology of Vermont Indians in the 1970’s (Haviland 6/10/1970). He and Power published the first edition of their book *The Original Vermonters* in 1980.

findings in a book entitled *We Have Not Vanished: Eastern Indians in the United States* (Tamarin 1974). The purpose of Tamarin's study was to determine whether the Indians had vanished from the Eastern States, as was commonly thought. "To find the answer required long hours of research and weeks of travel—from the top of Maine to the foot of Florida" (Tamarin 1974:12). His investigation led him to the following conclusion: "Vermont is the home of over 200 American Indians, probably from tribes throughout the East as well as the rest of the country....Vermont's modern Indian citizens are not descended from the state's original inhabitants." Tamarin was familiar with other Abenaki communities, such as one in Lake George, New York. He doubtless would have identified one in Vermont if it existed; but it was not there for him to see.

It is fascinating to examine the writings of Gordon Day during this period as well. He was still in the height of his career and published five works on the Abenakis during this eight year period. Despite the fact that the Abenaki Tribal Council was formed in Swanton during this time and suddenly became visible within the state, Day's articles do not include any confirmation of any connection between the newly formed Swanton Abenaki group and the historic Abenaki at Missisquoi.<sup>61</sup>

In his article about the "Western Abenaki" in the encyclopedic *Handbook of North American Indians*, Day maintained that Indians at Missisquoi abandoned their village and went to St. Francis after the American Revolution along with all the rest of the Western Abenakis in Vermont and New Hampshire (Day 1978:151-2). He observed "[b]eginning with World War I, the lure of industrial employment started small Abenaki communities in several northeastern United States cities" (Day 1978b:152). The cities with the most

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<sup>61</sup> Two articles Day wrote during this time included no comments on the fate of Missisquoi (Day 1974, 1979).

important Abenaki communities in the 1970's were Albany, New York,<sup>62</sup> and Waterbury, Connecticut. Vermont did not figure in this story.

Similarly in "Abenaki Place-Names in the Champlain Valley," Day wrote that

The last village in the Champlain valley to be occupied by the Abenakis was Missisquoi, and this seems to have been abandoned during the American Revolution. From then until about 1960 there was more or less continuous visiting and short-term residence by Abenakis from Saint Francis to old familiar locations in the valley. (Day 1981a:230).

After the American Revolution, the center of Abenaki society remained Odanak/St. Francis. Vermont was simply a place for individual Indians to visit; it was not the site of a permanent tribal occupancy. In this article Day specifically listed the informants who gave him translations and stories behind the Abenaki place-names he describes. Not a single informant came from the Swanton group. Rather, the informants were the Obomsawins on Thompson's Point and residents of the village at Odanak/St. Francis (Day 1981a:231, Day 1948-1973). He did not embrace the Swanton group as a new source of information.

Day's 1981 work, "The Identity of the Saint Francis Indians," is the culmination of all his studies of the Western Abenakis. It synthesized all his previous work. In that important monograph, Day did not abandon his conclusion that the bulk of the Abenakis left Missisquoi after the American Revolution (Day 1981b:56). He repeated his view that Odanak was the center of Abenaki life. "Contact was maintained between these families and those in Odanak, and many returned in later life to live in Odanak" (Day 1981b:62). He was silent on the existence of any Abenaki group in Swanton. While he incorporated some of John Moody's ideas in his discussion of the nineteenth century, he did not identify any late twentieth century group of Abenakis in Vermont (Day 1981b:57-58, 61-62). His reticence

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<sup>62</sup> Recall that the Obomsawins on Thompson's Point in Charlotte, Vt., had many Indian visitors from Albany, N.Y. (Royce 1969:2).

indicated he must not have thought they were actually tied to the historic Abenakis of the region.<sup>63</sup>

Day's specific reaction to the formation of the Abenaki Tribal Council, the Baker report, and Governor Salmon's Declaration indicate exactly what he thought about this new group and its claims of historic descent. Gordon Day's papers at the Canadian Museum of Civilization include a copy of Jane Baker's report to Governor Salmon. It is filled with his annotations, as he made comments in the margin of almost every page. He questioned her suggestion that these people had unique cultural "traditions as hunters, fishermen and trappers" (Baker 1976:9). He asked, "How different from rural Vermonters?" In response to her focus on this group's "conversations involv[ing] woodland and waterway adventure stories," he wrote, "Again, how different from rural Vermonters?" (Baker 1976:9). Day, a native Vermonter and woodsman himself, knew well how rural the state still was.

Day was emphatic and direct in his comments on the conclusions stated in Baker's October 15, 1976, cover memo to the Governor (Baker 1976). Next to the following two sentences he wrote, "no."

Evidence has shown, however, that the St. Francis Abenaki have always considered northern Vermont their true home and that they conducted regular summer migrations down the Richelieu River for at least the last hundred and fifty years. These visits stopped in the late 1960's for reasons unknown.

The subsequent sentence read as follows:

It is the assumption of this writer that the Abenaki currently residing in Vermont are the natural consequence of centuries of movement up and down the Richelieu River.

Adjacent to this he put a question mark. The last sentence in the paragraph read:

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<sup>63</sup> At the time he wrote the "Identity of the St. Francis Indians," Day had seen Moody's research (Day 1981b:vi). Although he acknowledged it and made references to it, he did not endorse Moody's view that the Swanton group was descended from the historic Missisquoi.

Many of the Canadian Abenaki were employed as sportsmen guides which implies that the summer visitations may have lasted months, increasing the chances of inter marriage and resettlement in Vermont.

To this he wrote, “not in Vt.”

Day’s most pointed comment was aimed at Baker’s conclusory statement that “Today’s claims are being presented by residents of the State who have proven their Indian heritage and relationship to the Abenakis of Odanak and Becancour.” To this, he underlined the word “proven,” and wrote “not yet” in the margin! (Baker 1976:29). He showed his skepticism of the proof by his notation next to this passage:

The census begun by the earlier Manpower staff has been continued by Mr. Canns in conjunction with the Tribal Council and they now have a list with 1,700 names and addresses of American Indians in Vermont. Approximately 80% of the names are coded Abenaki and Sokoki (another Abenaki group of the Connecticut valley) with the rest being Mohawk and other New England Indians. A few are resident American Indians from the western states.

Next to the line regarding coding the names as Abenaki, he wrote, “how?” (Baker 1976:15).

Day did not keep his criticisms of the Baker report to himself. His views were solicited by members of the Vermont Sportsmen’s Federation and reported to the press. Day was well aware of these reports, as his files included various news articles and editorials sent to him by J. Earl Capron, Secretary of the Vermont Sportsmen’s Federation.<sup>64</sup> These include one article reporting on a meeting of the Sportsmen’s Federation. The article stated that Day seriously disagreed with Baker’s report:

John Randolph, who has been asked to serve on the newly created Commission on Indian Affairs (see story), is perhaps the leading spokesman for the anti-recognition camp. As editor of The Vermont Sportsman magazine, Randolph wrote a scathing editorial in the December issue criticizing the Baker report and Salmon’s decision.

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<sup>64</sup> Day’s files are preserved at the Canadian Museum of Civilization in Hull, Quebec.

Randolph was at the meeting Sunday, and spoke at length on his views concerning the Indians, and on his contact with Dr. Gordon M. Day, an anthropologist who works for the National Institute of Man in Ottawa, Canada.

“Dr. Day told me that he was surprised that the state has not asked for any verification of the descent of these people,” Randolph said....

“I can’t claim to speak for Gordon M. Day, but I know that he would hotly contest the claims of genealogical studies in the Baker report,” Randolph said. (*Rutland Daily Herald* 12/13/1976).

The *Vermont Sportsman* editorial, referred to above, recounted a conversation between Day and Baker regarding the lack of Abenaki descendants in Vermont. It read as follows:

On Aug. 13, 1976 Mrs. Baker met with Gordon M. Day, a former Vermonter now in the employe [sic]of the Canadian government at Ottawa. She was told by the veteran of 20 years of anthropological study on the Odanak Abenaki Indians that there were no more than 10 families now living in Vermont which could be proved direct descendants of the original or pre-colonial Vermont Abenaki. Though Day is the only ethnologist and anthropologist who could comment expertly on this critical and focal subject, Mrs. Baker apparently chose to ignore the central fact of her research or to deliberately delete it from her report to the governor of Vermont and the people he represented.

The facts unearthed by twenty years of research by Gordon M. Day, not by Mrs. Baker, are that published Vermont and New England histories are inexcusably lacking in telling even the basic fact of the existence of Abnaki native Americans in Vermont at the time of white settlement. Mr. Day has also proved that there are Abnaki descendants of those original native Americans living in Vermont today, but they are but a miniscule remnant of a population which moved more permanently to Canada well before the War of 1812, when the Odanak Abenaki sided with Great Britain against the new country and thereby relinquished by war their territorial claims to Vermont. (*Vermont Sportsman* 12/1976).

There is no record in Day’s files of any correspondence to the Sportsmen’s Federation or Vermont newspapers indicating any disagreement with the articles about him. All indications, from his own comments on the Baker report, to the

second-hand reports of his views, imply that he continued to doubt the presence in Vermont of the 1,700 Abenaki descendants of the historic tribe.

## **1982 to Present**

### **External Observations**

In 1982, the petitioner submitted the instant petition to the BIA's Branch of Acknowledgment and Research (BAR). Since then its profile has been much more visible in Vermont. One significant event of the 1980's was a "fish-in" demonstration. This was a direct challenge to Vermont's fishing laws. When the participants in the fish-in were arrested and charged with fishing without a license, they asserted a defense in court that was aimed at obtaining tribal recognition. Petition, 130-31. In their defense they argued that they had aboriginal rights as Native Americans and thus were not subject to state regulation for fishing (*State v. Elliott*, 159 Vt. 102, 104, 616 A.2d 210, 211 (1992)). Through this lawsuit—which the fish-in participants invited by their conduct—they sought to obtain a court decision recognizing tribal rights (Petition:130-31). They were unsuccessful.

Petitioner submitted the trial court's opinion in the case to BAR with materials it provided as supporting documents to the petition. However, to supply that lower court decision alone is misleading, because it was reversed by the Vermont Supreme Court (*State v. Elliott*, 159 Vt. at 104, 616 A.2d at 212). In its decision the Supreme Court made clear that it did not need to rule on the question of whether the fish-in participants constituted a tribe.

The court said:

We do not decide whether the trial court ruled correctly on the issue of tribal status and assume for the purposes of this case that defendants are members of a bona fide tribe of North Americans. (*State v. Elliott*, 159 Vt. at 109, 616 A.2d at 214).

Since the Vermont Supreme Court did not rule on the issue of tribal status, it is wrong to contend that the Vermont courts have recognized the Abenaki as a tribe. The courts have not done so; the trial court's decision was overruled and has no precedential effect. The reason the Vermont Supreme Court did not recognize tribal status is because it held that even if the defendants were a tribe, their aboriginal rights had been extinguished long ago (*State v. Elliott*, 159 Vt. at 121, 616 A.2d at 221).

### **Summary of Failure of Evidence to Satisfy Criterion (a)**

In order to satisfy Criterion (a), the petitioner must demonstrate that its group of Abenakis was identified as an American Indian entity on a substantially continuous basis since 1900. It must produce "evidence providing a reasonable basis for demonstrating that a criterion is met or that a particular fact has been established." The comments on the final rule addressed the problems that arise when "evidence is too fragmentary to reach a conclusion or is absent entirely." In those situations, "a criterion is not met if the available evidence is too limited to establish it, even if there is no evidence contradicting facts asserted by the petitioner" (59 Fed. Reg. 9280). The implication is that when there is contradicting evidence the decision is easier. In those cases, the BIA will find that the criterion has not been met. This is summed up in the regulation itself:

A petitioner may be denied acknowledgment if the evidence available demonstrates that it does not meet one or more criteria. A petitioner may also be denied if there is insufficient evidence that it meets one or more of the criteria. (25 C.F.R. 83.6(d)).

The evidence presented by the petitioner is totally insufficient to satisfy Criterion (a). The additional evidence presented in the State's Response to the Petition contradicts the petitioner's contention that it existed as an Indian entity from 1800 to at least 1976, or even

1981. The numerous examples of scholars who searched but did not discover this Abenaki Indian entity weighs heavily against petitioner's claim. It stretches credulity to believe that petitioner existed as a tribe when Frank Speck, A. Irving Hallowell, Gladys Tantaquidgeon, Gordon Day, John Huden, and Alfred Tamarin were unaware of them. For the seventy-five year period between 1900 and 1976, there are simply no external observations of an Indian entity in northwestern Vermont—or anywhere in Vermont.

The petitioner's evidence is on par with that presented in the Chinook case where the BIA held: "A few identifications during a three-year period of the three-quarters of a century between 1873 and 1951 does not constitute 'substantially continuous' identification" (BIA Chinook Indian Tribe 2002:46205). Even shorter gaps in identification of the Indian entity have resulted in a failure under Criterion (a). The Muwekma record lacked evidence for at least a third of a century after 1927, and therefore did not satisfy the criterion for "substantially continuous" identification (BIA Ohlone/Costanoan Muwekma Tribe 2001:14). The Duwamish record exhibited a break of continuity from 1900, when the federal government last dealt with the "Duwamish and other allied tribes," and 1925 when the new group was formed (BIA Duwamish Tribal Organization 2001:15).

Even if somehow the regulations were interpreted in an unprecedentedly broad fashion and the St. Francis/Sokoki Abenaki were deemed to have provided sufficient evidence of external identification since 1900, the BIA would still be required to consider the total absence of evidence of identification from 1800 to 1900. That is because the result of a determination under the 1994 federal regulations must be the same as it would have been under the 1978 regulations. When the regulations regarding acknowledgment were revised in 1994, the Department of Interior said: "None of the changes made in these final

regulations will result in the acknowledgment of petitioners which would not have been acknowledged under the previously effective acknowledgment regulations” (59 Fed. Reg. 9280). The fact that there are no contemporary outside observers who identified an Abenaki entity in Vermont for the entirety of the nineteenth century would have defeated any claim under Criterion (a) in the 1978 regulations. The revision of the regulations, with their focus on the period after 1900, does not mean that pre-1900 information may be ignored. The analysis must reach the same result under both sets of regulations. And, it is clear that the petitioner does not satisfy the external identification criterion under either one.

#### **Criterion (b) — Community**

“A predominant portion of the petitioning group” must comprise a “distinct community” and must have “existed as a community from historical times until the present” (25 C.F.R. 83.7(b)). In order to obtain federal acknowledgment, one of the essential elements that the petitioner must prove is that it has constituted a community distinct from non-Indian society. That distinction could be maintained in a positive way through separate language and customs. Alternatively, the distinction could be forced on the group in a negative way, through discrimination by the surrounding society. Both have the significant effect of keeping the Indian group separate. In addition to being distinct, the community must be an interactive one whose members are united through marriage and social ties. Moreover, the community must be continuous from historical times to the present; that is, its members must be traceable through the decades as members of the same community.

In order to prove that its group is “a distinct community from other populations in the area,” the petitioner must provide evidence of a certain level of “social distinction from non-members” (BIA Miami Nation of Indians 1992:6).

This requires that they identify themselves as distinct and are identified as different by non-members of the group. However, the existence of only a minimal distinction provides no supporting evidence for the existence of social cohesion within the membership. Where a community exists, there characteristically are differences in the extent and nature of tribal community members’ interaction with outsiders compared with their interaction with non-members [sic] of the community. For example, there may be limitations of and/or differences in their relationship with non-Indian relatives and their participation in non-Indian institutions such as schools and churches may also be limited or otherwise distinct from that of non-Indians. (BIA Miami Nation of Indians 1992:6).

Furthermore, a federal appeals court has held that to exist as a community under the Supreme Court’s *Montoya* definition of a tribe,<sup>65</sup> there has to be “an Indian community [which] is something different from a community of Indians. That is to say, it has some boundary that separates it from the surrounding society, which is perceived as Indian and not merely as neighborhood or territory” (*Mashpee Tribe*, 592 F.2d 575, 586 (1<sup>st</sup> Cir. 1979), *cert. denied*, 444 U.S. 866 (1979) and 464 U.S. 866 (1983)).

The federal regulations elaborate on this criterion regarding “community” with examples of evidence that may be used to demonstrate community (25 C.F.R. 83.7(b)(1)). These emphasize ways in which the community is socially differentiated from the surrounding non-Indian society. Separate Indian churches, schools, or cemeteries are typical examples used to satisfy this criterion (*Miami Nation of Indians of Indiana v. Babbitt*, 112 F. Supp. 2d 742, 748 (N.D. Ind. 2000), *aff’d*, *Miami Nation of Indians v. U.S. Dept. of Interior*,

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<sup>65</sup> In *Montoya v. United States*, 180 U.S. 261, 266 (1901), the U.S. Supreme Court said: “By a ‘tribe’ we understand a body of Indians of the same or similar race, united in a community under one leadership or government, and inhabiting a particular though sometimes ill-defined territory.”

255 F.3d. 342 (7<sup>th</sup> Cir. 2001)). A group that fails to meet these requirements might look like this:

Probably by 1940 and certainly by 1992, the Miami Nation had ceased to be a tribe in any reasonable sense. It had no structure. It was a group of people united by nothing more than common descent, with no territory, no significant governance, and only the loosest of social ties. (*Miami Nation v. Dept of Interior*, 255 F.3d at 350).

Presented below are examples of community from BIA decisions in which petitioners satisfied Criterion (b). These are contrasted with the evidence offered by the St. Francis/Sokoki Band of Abenaki of Vermont.

### **Swanton Church is French Canadian, not Indian**

The existence of a tribal institution is one way of demonstrating “tribal cohesion” and “the strength of the ethnic boundary” between the Indian community and the white population around it (BIA Narragansett Indian Tribe of Rhode Island 1982:10). The Narragansett Indian Church is an example that strongly demonstrated community for Criterion (b) in that case:

The church was formed as an independent community-controlled institution by members of the Narragansett community. Although the denomination has changed occasionally, the church has been led through most periods by a Narragansett minister and apparently has always had an exclusively Narragansett membership. The governing body of the church presently consists of a board, the members of which are also members of the tribe. The land on which the church was constructed is tribal land, not land owned by a particular denomination. (BIA Narragansett Indian Tribe of Rhode Island 1982:10.)

None of these conditions existed in Swanton. Many of the petitioner’s ancestors were quite closely connected to the Church of the Nativity, the Catholic Church in Swanton. There are numerous records of baptisms and marriages of petitioner’s ancestors there, as

shown in petitioner's Family Descendancy Charts. The church cemetery, St. Mary's Cemetery, was heavily used by petitioner's ancestors as well<sup>66</sup> (Ledoux, T. 1993). One cannot discern any limitations on the petitioner's families' participation in the Catholic Church that indicate they were treated differently from non-Indians. There is no separate Indian section for the petitioner's ancestors—they are buried in various places within the cemetery. There is no indication of "Indian burial," in any of the records. Nor was the church traditionally an Indian church, or one that grew out of an Indian mission. As the history of the church reveals, this parish was French Canadian.

There were only a few scattered years during which the Swanton area was served by missionaries to the Indians. The first was not exactly at Swanton, but nearby on one of the islands in Lake Champlain. It was a short-lived French mission established in 1666 on Isle la Motte (Huden 1956b:116, Calloway 1990a:72). There may have been another short-lived mission on Lake Champlain in 1682 as well. (Calloway 1986:216). None of these lasted any significant length of time. John Gilmary Shea's *History of the Catholic Missions Among the Indian Tribes of the United States, 1529-1854* does not report any missions at Missisquoi (Shea 1855:23, 155-57, missionaries to serve Penobscot and Odanak/St. Francis).

Sixty years later, the French saw a tactical advantage in sending a missionary to the Abenakis at Missisquoi; namely, they hoped this would wean them from the English and ally them with the French (Charland 1961:7, Coolidge 1985:141). So, Father Etienne Laverjat, who had been a missionary in Maine and to Odanak/St. Francis, went and served the Indians at Missisquoi from 1744 to 1748 (Ledoux, R. 1988:136; Coolidge 1985:142). A chapel was

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<sup>66</sup> Petitioner's families did not all go to the Catholic Church though. There are a number who were buried in the Protestant Cemetery in Swanton as well. One notable family buried in Riverside Cemetery is that of Chief Leonard "Blackie" Lampman (Family Descendancy Charts, Hoague family, 31-34).

built in 1745; it was dismantled and its pieces used for a fort when the Abenakis left Missisquoi during the American Revolution (Charland 1961:8; Coolidge 1985:142).

Thus, during the two centuries from 1600 to 1800, there were only sporadic attempts to set up a mission in the Missisquoi region. The longest period of missionary residence seems to have been four or five years. It was more than a hundred years later before a priest was sent to serve Swanton again in 1854. In the intervening years, there were infrequent visits from itinerant missionaries who were based in Burlington. One was Father Amable Petithomme. He is mentioned in the Petition Addendum, where petitioner suggests that he “often pursued the ‘wandering’ Indians outside of the known reserves and reservations” (Petition Addendum 313-14). But the facts do not bear this out. Petithomme and another priest, Father Démillier, had been sent from France at the same time in 1834. Démillier was to serve the Passamaquoddy Indians in Maine, while Petithomme was sent to Burlington to serve the flood of Canadians who spoke only French (Mouly 1960:36-38).

Petithomme ministered to his people up and down Lake Champlain, from Vergennes to Swanton, and inland to Hinesburg. He covered a large territory. The Bishop of Boston complimented him on his progress among the Canadians, not Indians (Mouly 1960:44). No one described him as a missionary to the Indians in Vermont. Later, when his time in Burlington ended in 1835, he was sent to work with the Penobscot in Maine (Mouly 1960:46-47; Ledoux, R. 1988:137). This was an Indian assignment, and he found it difficult. He knew no English and very little of the Indian language, and these were the two languages spoken by the Penobscot. (Mouly 1960:50-52; Ledoux, R. 1988:137). Thus, petitioner’s suggestion that Petithomme sought out Indians in Vermont is unsupported speculation.

The Church of the Nativity of the Blessed Virgin Mary in Swanton received its first resident priest in 1854: Father Louis Lionnet, born in France. (Ledoux, R. 1988:138). He served a growing French Canadian Catholic community. A history of French Canadians in New England, written in 1891, listed the Swanton Catholic parish as one of the earliest French Canadian parishes in Vermont, giving the date of its formal founding as 1856 (Hamon 1891). As opposed to some parishes that were listed as “mixed,” Swanton was considered fully French Canadian. In 1891, Swanton had 240 Catholic families, of which 230 were French Canadian (Hamon 1891:194). The church with which most of the petitioner’s families have been associated has never been an Indian church. On the contrary, its origins are French Canadian.

#### **No Indian Cemetery was Used by Petitioner’s Ancestors in the Twentieth Century**

Another indication of community sometimes found in tribes that satisfy Criterion (b) is the use and maintenance of a separate Indian cemetery (BIA Jena Band of Choctaw 1994:4, BIA Mohegan Tribe of Indians of the State of Connecticut 1994:78-84). This was the case with the Jena Band of Choctaw whose members continued to use their Indian cemetery even after they joined white churches and discontinued Indian mourning customs. One tie that united the community was the elders’ work in organizing members to clean and maintain the cemetery (BIA Jena Band of Choctaw, Anthropological Technical Report, 1994:11-13). The Mohegan Tribe continued to use its Indian cemetery throughout the twentieth century up to the time of their petition’s submission (BIA Mohegan Tribe of Indians of the State of Connecticut 1994:82). Only Mohegans (and some non-Mohegan

spouses) could be buried there. A special cemetery committee even existed to confirm eligibility.

In Swanton, there was at one time an Indian burial ground, known to Indian scholars in the late-nineteenth century. Rev. John Bulkley Perry, Swanton historian and professor at Harvard University, wrote in 1868 that this burial ground was

situated about two miles below the Falls, on a sandy terrace of considerable thickness, which rests on underlying clay. It is near the Missisquoi River, and undoubtedly belonged to the St. Francis tribe, a branch of the great Algonquin race, inhabiting that portion of Northwestern Vermont when it was first settled by whites. This burial-place was apparently connected with an old Indian village in the neighborhood, which consisted at an early day of about fifty huts, and was called Missisquoi, after the estuary or stream, on the banks of which it stood. It was unquestionably used as a place for the interment of the dead at a comparatively recent date... (Perry 1868:219).

This is something other than the Catholic Church's cemetery, which is located in the center of town. The Catholic Cemetery, St. Mary's, is the one used by most of the petitioner's ancestors. According to the Family Descendancy Charts prepared by petitioner, petitioner's ancestors were using St. Mary's cemetery by 1860. That's where the progenitors of the St. Francis, St. Laurent, Belrose, Campbell, Hakey, LaFrance and Medor family lines are all buried (*see* Family Descendancy Charts, first generation). It is also the location of the burial places of the second generation in the family lines of Hoague, Colomb, Ouimette, and Morits. These families list no burial information for the individuals in the first generation, all of whom came from Canada.

The prevalence of petitioner's ancestors in St. Mary's Catholic Cemetery indicates that these people maintained no connection, if ever they had one, with the Indian burial ground below the Falls, referred to by Rev. Perry. The fact that archeologists may have found ancient human remains in Swanton is not relevant to Criterion (b). The petitioner's

families were, for the most part, members of a French-Canadian Catholic community that used St. Mary's Cemetery.

### **No Indian School Existed in Franklin County**

The existence of a separate Indian school can be one way of demonstrating community under Criterion (b). (BIA Jena Band of Choctaw Proposed Finding, 1994:4; BIA Little Shell Tribe of Chippewa Indians of Montana, Proposed Finding, Charts, 2000:8, BIA Narragansett Indian Tribe of Rhode Island 1982:2). There was no separate Indian school for the Abenakis in Swanton or elsewhere in Franklin County. There is no evidence of social distinction here. A search for petitioner's ancestors was also conducted in the records of the Carlisle Indian Industrial School. Petitioner's ancestors do not appear there. The only Abenakis who show up as students there were from the Tahamont and Masta families with connections to Maine, and Lake George, N.Y.

### **Petitioner's Ancestors Were Active Participants in White Business and Social Groups**

The federal regulations provide examples of evidence that will satisfy Criterion (b). One type is "evidence of strong patterns of discrimination or other social distinctions by non-members" (25 C.F.R. 83.7(b)(1)(v)). Exclusion from social clubs or businessmen's organizations falls into this category. Discrimination in forms of address, business dealings, or physical harassment is also evidence that meets this criterion. The Jena Band of Choctaw provides an example:

The local population considered the Choctaw to be different from the rest of the population and treated them accordingly. The local store account books from the early 20<sup>th</sup> century showed that they paid for goods by skinning and curing hides as well as by day labor and household help. The Choctaw were

identified by the storekeepers by a first name and title “Indian” rather than by a first and last name. On the other hand, non-Indian customers were simply identified by name. When the Choctaw arrived in town as a group on a Saturday night, they were often subject to harassment from the general population and in particular from the town marshal. (BIA Jena Band of Choctaw 1994:4).

None of this occurred in Swanton. To the contrary, the petitioner’s ancestors appear to have been quite well integrated into the rest of Swanton society. They were members of several social and civic organizations and one was elected to city and state government office.

The Medor family was very involved with a Catholic French-Canadian organization called L’Union St. Jean Baptiste. This French Canadian patriotic association was founded in Quebec in 1834 “to stimulate a nationalist spirit” and encourage its members “to defend their linguistic and cultural heritage” (*Canadian Encyclopedia* 1985a). It eventually established branches in the United States, such as the one in Swanton.

The following news article points out the active involvement of the Medors in this organization devoted to the promotion of French Canadian culture:

Through the efforts of Dr. Carrieres, H.J. Campbell, Ed. Medor 1<sup>st</sup>, and Ed Vanslett, a St. Jean Baptiste Society has been formed here, the same being organized Sept. 13<sup>th</sup>; at which time 13 members were present. The society now numbers 60 persons and is in a flourishing condition. The following are the officers: Edward Vanslett, president; A. N. Dufresne, vice president; Dr. Carrieres, secretary; J. Mercier, treasurer; H. J. Campbell, marshal; Charles Beard, assistant marshal; Edward Medor 2d and B. Duval, executive committee. (*Swanton Courier* 10/29/1881).

The two Edward Medors appear in the Family Descendancy Charts for the Peter Cayie Medor family. They are uncle and nephew to each other, listed as individuals #5 and #9 respectively in that line. Another Medor family member, Joseph Medor, shows up as treasurer of the Society in 1913 (*Swanton Courier* 12/4/1913). Joseph is a brother of Edward 2d and is listed as individual #8 on that family chart.

Another fraternal organization named R.E. Columb as an active member (*Swanton Courier* 12/ 4/1913). This was the Missisquoi Camp of the Modern Woodmen of America, a fraternal insurance company founded in Iowa in 1883 (Modern Woodmen of America 1999a). The founder was inspired to choose the name after thinking about “the work of the pioneer woodmen clearing away the forest.” He likened this to “the task of eliminating a man’s financial burdens in the event of his death.” (Modern Woodmen of America 1999b). This is hardly an analogy supportive of Indian heritage. R.E. Columb, a member of the Modern Woodmen, appears in the Joseph Columb Family Descendancy Chart as individual #80. The *Courier* states that the Woodmen’s quarters were in his building in Swanton.

Some of these same individuals helped form the Swanton Board of Trade in 1919. That organization’s original members included R.E. Colomb, Joseph Medor, William Medor, and Gaylord Warner, all of whom appear in the Family Descendancy Charts (Ledoux, R. 1988:175). William Medor is individual #12 on the Medor Family Chart; Joseph and R.E. Colomb are #8 and #80, respectively, on the Colomb chart; Warner is married to Martha Hance, individual #12 on the Hance family chart.

Not only were these ancestors of the petitioner involved in the mainstream business and social organizations of the community, but two of them also served the community in elected office. R.E. Colomb was a village trustee from 1914 to 1916 (Ledoux, R. 1988:36). Joseph Medor was not only a town selectman from at least 1903 to 1908, but he was elected to represent Swanton in the State Legislature in 1908 (Ledoux, R. 1988:34, State of Vermont, Secretary of State 1908:512). In addition, R.E. Columb’s son Arthur served in the local fire department in the 1940’s (*Swanton Courier* 11/12/1942; Joseph Columb Descendancy Chart individual # 184).

The mixing of these individuals in white society, through social and civic organizations, and ultimately through elected office, demonstrates a high degree of integration and acceptance in the community. It is directly contrary to the petitioner's claim that these families "remained on the margins of white society" (Petition:149). These are not the type of things one would see if the Indian community was a separate, distinct community apart from the rest of Swanton as the petitioner contends.

### **There Has Not Been a Continuous Geographic Concentration of Indians in Franklin County**

The geographic concentration of the residences of the petitioning group can be used to satisfy Criterion (b). It can be used for "high evidence" of geographical concentration, by demonstrating that "[m]ore than 50 percent of the members reside in a geographical area exclusively or almost exclusively composed of members of the group, and the balance of the group maintains consistent interaction with some members of the community" (25 C.F.R. 83.7(b)(2)(i)). Or, it can be used as part of the overall presentation of evidence as was done in the Wampanoag and Narragansett cases (BIA Wampanoag Tribal Council of Gay Head 1987:5, BIA Narragansett Indian Tribe of Rhode Island 1982:9). Significant numbers of Narragansett Indians lived within a ten-mile radius of the town of Charlestown from the mid-1750's to the time the petition was filed. Emigration from the area was limited (BIA Narragansett Indian Tribe of Rhode Island 1982:9). The lack of geographic concentration can also be important. The MaChris case illustrated the need for both geographic clustering and identification of an area as Indian:

While Federal census and county records show there has been some residential clustering and interaction among the principal families in the group from 1850 to the present at various and somewhat scattered locations in

southeastern Alabama, these family enclaves have never been regarded by others as being American Indian communities. (BIA MaChris Lower Alabama Creek Indian Tribe 1987:3).

The St. Francis/Sokoki Abenaki materials follow the latter illustration. The petition admits that the outsiders did not regard the areas where petitioner lived as Indian (Petition:159). In addition, although the petition talks a lot about the continuity of habitation in Swanton and surrounding areas of Franklin and Grand Isle counties, the federal census records present a picture of Indians scattered around the state from 1860 to 1970, with almost no Indians at all in Swanton (*see* Table 1 above).

Even within Franklin County, the federal census records do not depict a distinct community. The census records from the late nineteenth century show the petitioner's ancestors living in French Canadian neighborhoods, holding jobs that were the same as their non-Indian neighbors (Davis Affidavit, Attachment A:1-2).

### **The Petitioner Did Not Immigrate to Vermont as a Group at Any One Time**

In contrast to the Narragansett, the St. Francis/Sokoki group was not stable. It exhibited a great deal of immigration and emigration. Movement alone does not disqualify a group from federal acknowledgment. However, the movement must fall in a pattern that shows "a group whose history could be traced through time and place" (BIA Steilacoom Tribe of Indians 2000:5881). To satisfy the "community" criterion, the evidence should "demonstrate that immigrants to the same place had preexisting ties based on earlier marriages, common residence in a settlement, or membership in a group" (BIA Little Shell Tribe of Chippewa Indians of Montana, Charts, 2000:4). They need to have migrated to the area together as a group, or in waves that show a connection between the old place of

habitation and the new one. A crucial question to ask is: “Do the migrants have any previous connection with each other that might inform the analysis of community once in Montana, including continuing ties with predecessor groups?” (BIA Little Shell Tribe of Chippewa Indians of Montana, Charts, 2000:4). The criterion of community will not be satisfied if a number of unconnected people come together as a group in the twentieth century.

However, that is exactly what we have here. The petitioner’s Family Descendancy Charts provide a useful means of examining the immigration pattern of the families that supposedly make up the present community. Those charts, supplemented with information from other parts of the petition, show that families came to Swanton, or the surrounding area, over a hundred and twenty year period, from a variety of locations:

Table 2

Dates of Immigration of Families on Petitioner’s Family Descendancy Charts

Family	Date Arrived in Swanton	Former Location	Source
Morits, John	1820’s	Quebec	John Morits was born in Quebec; no town given. His son, John F. Morits, was born in Highgate in 1826.
St. Laurent	1830’s	Quebec	Hippolyte St. Laurent was born in Quebec; his children Sophie and Marie (and their husbands, Joseph Bourgeois and Lewis Colomb) were also born in Quebec, according to census records. The first grandchild to be born in Vermont was Mary Colomb in 1833.
Colomb	1830’s	Waterloo, Quebec	Joseph Colomb was born in Quebec, as were his three children. His first grandchild to be born in Vermont was Mary Colomb in 1833. Joseph Colomb Chart.

Family	Date Arrived in Swanton	Former Location	Source
Medor	1834-1841	St. Regis, Quebec	Peter and Marguerite Julia (St. Pittie) Medor both born in St. Regis, Quebec. Their second child was born in St. Regis, their third child was born in Swanton. Their sixth child was born in New York state in 1853. Peter Medor Chart.
Hance	1849-1854	St. Gregoire, Quebec	Dates and places of birth of children of Antoine and Caesarie Hance, Antoine Hance Chart.
Phillips	1848-1850	Quebec	Antoine and Catherine (Cadaive) Phillips were both born in Quebec. Their children were all born in Quebec between 1829 and 1848. They first show up in the 1850 federal census for Highgate, VT. The children and grandchildren of Antoine and Catherine did not stay in Vermont. Granddaughter Mary was born in Fort Edward, NY, and three of her children were born in Fort Edward, Morris Forks, and Scotia, NY. Antoine and Catherine's grandson Louis was born in Maine, and two of his children were born in Saratoga and Amsterdam, NY.
St. Francis	1850	Iberville County, Quebec	The 1900 census indicates Mitchell St. Francis was born in Quebec and immigrated to the U.S. in 1850. Mitchell's sisters were married at Ste. Brigide in Iberville in 1851.
Desmarais	1850's	Quebec	Louis Desmarais was born in Quebec; his son George Demar was born in Franklin, Vt., in 1857.

Family	Date Arrived in Swanton	Former Location	Source
Hoague	1868-1870	St. Hyacinthe and St. Dominique, Quebec	Flavien Hoague and his parents were born in Quebec. He married Adele (Belair) Hoague who was also born in Quebec. Their first six children were born in Quebec. Their seventh child was born in Swanton. Flavien Hoague Chart. (U.S. Bureau of the Census 1870b).
LaFrance	1869	Quebec	Charles and Mary LaFrance were both born in Quebec; four of their seven children were born in Quebec. Charles LaFrance Chart.
Ouimette	1870's	St. Armand, Quebec	Theodore Ouimette and his children were all born in Quebec. Two of his children were married in Swanton. Theodore Ouimette Chart.
Hakey	1890	Massachusetts and Quebec	Eli Hakey was born in Massachusetts; his parents and grandparents were born in Quebec. Eli was married in Swanton in 1891. Eli Hakey Chart. (U.S. Bureau of the Census 1900e).
Partlow	1900	New York	Charles Partlow was born in Alburg, VT, but he married Sophie Blair in Clinton county, NY, and all their children were born in New York. Only two family lines are provided for the subsequent generations. Their son George married a woman from Massachusetts and they moved to Swanton before their first child was born in 1902. Charles and Sophie's son Frank married a woman from New York and their first two children were born in New York. Charles Partlow

Family	Date Arrived in Swanton	Former Location	Source
			Chart.
Obomsawin	1901-1909 (to Charlotte, Vt.)	Odanak, Quebec	Simon Obomsawin and his children were born on the Abenaki reserve at Odanak/St. Francis, Quebec. They went to Grand Isle County around 1900 and then settled in Charlotte, Vt., at the southern tip of Lake Champlain late that decade. (Royce 1969).
Gibeau	1920's	Trois Rivières, Quebec	Margaret Gibeau was born in Trois Rivières, Quebec. She was married in 1924 in Swanton.
Gardner (Joseph)	1940's	New York	Petition:85-86.
Lapan (Lawrence/Pete)	1940's	New York	Petition:85-86
Nepton	Late 20 <sup>th</sup> c.	Massachusetts, Quebec, Connecticut and Rhode Island	There is not a single birth, marriage, or death listed in Vermont on the Nepton Family Chart for six generations.

Not only does this demonstrate that no single group moved from one location to another, but it shows a lack of community relations among the ancestors of the petitioner. Since these people were not all living in the same place in the 1840's or the 1890's, they did not constitute one community at that time. They were certainly not one community in Swanton, since they had not yet all arrived. And, they were not one community in Quebec or New York, since they did not all come from the same town or parish.

This evidence corresponds with the example of the United Houma Nation. In the proposed finding against federal acknowledgment for the United Houma, that evidence led to the conclusion that the petitioner did not exist continuously as a distinct community from historical times to the present. As the Proposed Finding stated, there was “no evidence for a

UHN ancestral community (Indian or non-Indian) prior to 1830” (BIA United Houma Nation 1994:11). The specific deficiencies were described thus:

The UHN ancestors who first settled the bayous of southern Lafourche and Terrebonne Parishes, Louisiana, did not enter the area together. The UHN petitioner presents a situation in which a small number of individual Indians, from partially unknown tribal backgrounds (two unrelated Indian women and a single Indian nuclear family), and numerous non-Indian individuals, coalesced into a distinct community on Bayou Terrebonne between 1810 and 1830. Geographically, the origins of the individual families can be traced to several locations...

The petitioner’s ancestors who would meet in Louisiana’s lower bayous had few, if any, previous relationships, other than those within nuclear families....The documentation indicates that the vast majority of the ties among the UHN’s ancestors developed only after the families had settled on their land in Terrebonne Parish after 1800. After moving onto Spanish-era grants along Terrebonne Bayous near present-day Montegut, they united through marriage, economic undertakings, and other social interactions. After these immigrants had become one another’s neighbors, over the course of a generation, the settlers evolved into the small farming community shown on Federal census records and General Land Office records in the 1830’s. (BIA United Houma Nation 1994:12).

There is another way to examine a cross-section of the group described by petitioner. Instead of using the Family Descendancy Charts which list the ancestors of the present day community, we can examine names from the petitioner’s list of prior generations in the petition’s Appendix 1B to the Petition Addendum.<sup>67</sup> Names found in the federal census for 1870 and 1900 include information on the birthplace of the individual and his or her parents, as well as immigration and naturalization dates (U.S. Bureau of the Census 1870a, 1870b, 1900d, 1900e). This is summarized in the following table:

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<sup>67</sup> This list contains some names not found in the 1995 Family Descendancy Charts because petitioner narrowed its focus over time. The changing lists demonstrate the high degree of uncertainty in petitioner’s proof.

Table 3

Continuity of Generations in Canada with  
Pattern of Immigration of Individuals in Petition Addendum

Name	Town	Date of Immigration or Naturalization	Number of Generations born in Canada	Census
John Martin	Highgate	1796-1844	2	1870
Isaiah Ramo	Highgate	1808-1859	2	1870
Charlie Martin	Highgate	1808-1852	2	1870
Peter Medor	Swanton	1832-1854	2	1870
Peter Greenia	Highgate	1822-1852	2	1870
Stephen Brow	Swanton	Before 1826	1	1870
John White	Highgate	1830	2	1900
Mitchell Young	Swanton	1837-1866	2	1870
Joseph Martin	Highgate	1839-1863	2	1870
Peter Medor	Swanton	1840	2	1900
Martha Campbell (wife of George)	Swanton	1841	2	1900
Abram Campbell	Swanton	1844-1863	2	1870
Moses Greenia	Highgate	1847	2	1900
Edward Bushey	Highgate	Before 1848	1	1900
Nelson Hakey	Swanton	1850	2	1900
Mitchel St. Francis	Swanton	1850	2	1900
Edward Hance	Swanton	1854	2	1900
Eliza Vancelette (wife of Moses)	Swanton	1860	2	1900
Joseph Hoague	Swanton	1860	2	1900
Mary Medor (wife of Charles)	Swanton	1863	2	1900
Peter Hoag	Swanton	1863	2	1900
Tuffield Bushware	Swanton	1864	2	1900
Albert LaFrance	Highgate	1866	2	1900
Joseph LaFrance	Highgate	1867	2	1900
Sophia Greeno (wife of Justin)	Swanton	1867	2	1900
Flavius (Fayvan) Hoag	Swanton	1870	3	1870
William Hakey	Highgate	1870	2	1900
John Lafarer	Swanton	1870	2	1900
Maggie Bushey (wife of Joseph)	Swanton	1880	2	1900
Gilbert Ouimette	Swanton	1880	2	1900

Name	Town	Date of Immigration or Naturalization	Number of Generations born in Canada	Census
Joseph Remillard	Swanton	1893	3	1900
Emma Penell (wife of Frederick)	Swanton	1895	2	1900
Sarah Bushware (wife of Fred)	Swanton	1898	2	1900

Once again, the obvious conclusion is that the people who supposedly comprised the Abenaki community in Franklin County did not move to the area all at the same time. Moreover, they did not move there after only a short, temporary sojourn in Canada. In many cases they had lived in Canada for 2 or 3 generations before taking up residence in northwestern Vermont.

There is one interesting exception to the disordered picture of immigrants to Swanton who now claim to be Abenakis of Vermont—that is the Obomsawin family. They did retain a connection to a “predecessor community,” and it was an Indian community. They kept up their ties to relatives at Odanak/St. Francis. They appear on the rolls of Abenakis maintained at Odanak/St. Francis. The 1875 census of the Abenakis in the village at St. Francis lists dozens of members of the extended Obomsawin family. Simon himself, the father of Marie, Elvine, Marion, and William, appears as a young man with his father and siblings in the list of tribal members who lived off the reserve in other parts of Canada<sup>68</sup> (Canada, Indian Affairs 1875:6).

That 1875 census for Odanak/St. Francis counts how many members of the tribe were “Absents aux Etats,” or absent in the United States (Canada, Indian Affairs 1875:5). The

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<sup>68</sup> The Family Descendancy chart for Simon Obomsawin says he was born in 1850. That fits with the individual listed on the 1875 Odanak/St. Francis census here.

specific names of the Odanak members who were in the United States at that time are given on the last page. Not a single one of these individuals shows up in the Family Descendancy Charts of the St. Francis/Sokoki petitioner. A similar list exists for the 1873 census; there too, none of the individuals in the United States show up in the petitioner's family charts. (Canada, Indian Affairs 1873).

The example of the Obomsawin family stands out, over and over in the evidence. In contrast to the petitioner, whose members from Swanton never identified themselves as Indian, were unknown to the Abenakis at Odanak/St. Francis, and who never shared their cultural knowledge with the researchers who sought to learn about it, the Obomsawins repeatedly shine through. But one family at Thompson's Point in Charlotte does not make a tribe in Swanton.

### **The Abenaki Language Was Not Spoken by Petitioner**

One type of evidence listed in the federal regulations that will satisfy Criterion (b) is retention of a unique cultural trait such as the speaking of an Indian language (25 C.F.R. 83.7(b)(1)(vii)). The Jena Band of Choctaw kept their language; this was positive evidence in favor of acknowledgment in their case (BIA Jena Band of Choctaw 1994:4). Among the petitioner's ancestors the Abenaki language died out. The petition stated in 1982 that "Research to date has not found any contemporary speakers" of Abenaki in Vermont (Petition:95). When Homer St. Francis spoke of large gatherings at his father's house in the first half of the twentieth century, he said the visitors all spoke French—and he could not understand them (Petition:92).

When Gordon Day was looking for native Abenaki speakers in the 1950's, the only ones he could find in Vermont were the Obomsawins (Day 1948-1973). This family did not pass on the language to its children though. According to the petition, Elvine Obomsawin consciously decided not to teach her granddaughter Nettie DeForge the language and culture of the Abenaki (Petition:100). Jeanne Brink reports that her Obomsawin grandmother "didn't teach her children the Abenaki language, because she wanted them to be assimilated" (*Montpelier Bridge* 12/2000).

### **Cultural Practices Were Not Retained in Any Abenaki Community in Vermont**

When Homer St. Francis wanted to re-create an Abenaki naming ceremony, he turned to scholar Gordon Day for instruction (Day 4/25/1990). There was no one in the re-constituted Abenaki community in Franklin County who knew the practice; it had not been retained. While the petition mentions that some individuals in the 1980's remember seeing older men and women engaging in certain practices that they attributed to being Indian, there is no evidence that these practices continued past the 1930's or that they were taught to later generations (*see, e.g.*, Petition:95 (burial custom), 95 (cooking skunk), 96 (sweat lodge)). Thus there was a significant gap in the practice of traditional Abenaki culture. Pieces that have been revived since the 1980's are merely that—revival of a long forgotten culture.

In the 1980's there was a "re-establishment of cultural gatherings," which had not been a part of the society before that (Wiseman 2001:167). The very fact that these gatherings had to be "re-established" demonstrates that they had died out. Moreover, the audience for these gatherings was as much the white community as the petitioner itself. The

pow-wows that *began* in 1990 sought to publicize the new presence of the petitioner to those who did not know about it (Wiseman 2001:168).

### **Membership in the St. Francis/Sokoki Abenaki is Loose and Fluid**

The analysis of the community criterion for the Narragansett relied in part on evidence that “one is born a Narragansett and one remains one for his entire life.” The sense of community attachment is so strong that “even among members expressing some dissatisfaction with tribal politics withdrawal of membership is not considered a viable alternative” (BIA Narragansett Indian Tribe of Rhode Island 1982:10). Among the Narragansett, individuals have a strong sense of belonging to the tribal community all their lives. This evidence supported a finding in favor of acknowledgment on that criterion.

In contrast, other petitioning groups have been denied acknowledgment when they have been created by a fluid membership recruitment process. This was the case for the Southeastern Cherokee Confederacy, the Northwest Cherokee Wolf Band, and the Red Clay Inter-tribal Indian Band (BIA Southeastern Cherokee Confederacy 1985a:5).

All three are recently formed voluntary associations of individuals who believe themselves to be—and in some cases are—of Indian descent. Additionally, they are overtly multi-tribal. Their recruitment notices state that specific tribal heritage is not a consideration for whether or not a person may join one of the groups—only a certain blood quantum. (BIA Southeastern Cherokee 1995a:54).

As the BIA put it, this is the “direct antithesis of *belonging* to an historic tribal community through birth or marriage” (BIA Southeastern Cherokee 1995a:55).

The members of the St. Francis/Sokoki Abenaki of Vermont do not exhibit the clear sense of belonging to a tribe that the Narragansett display. It is difficult for outsiders, such as the State, to know very much about internal membership disputes, but some have crept into

the public view. In 1977, Chief Homer St. Francis threatened to kick people out of the tribe. Wayne Hoague, the first chief of the reconstituted Abenaki Tribal Council, filed a complaint with the State about the tribe's mishandling of funds. According to the *Burlington Free*

*Press*:

In his complaint, Hoague said, "People who are card holding members (of the tribe) are being told by Homer St. Francis (present Tribal Council chairman) that if they don't like the way things are being done he will take their Indian cards away." (*Burlington Free Press* 1/17/1977).

Chief St. Francis's method of dealing with Hoague was repeated in his treatment of another political opponent ten years later, as seen in the following news report of a tribal meeting:

There were allegations of misuse of funds and power tossed back and forth. One voice could be heard to say: "The bylaws say if the chief or anyone else is a nuisance, you can throw him out."

Another voice, this one female, yelled: "Throw Joan (St. Pierre)." Someone apparently made a motion to that effect. The screamed yeas and nays sounded of equal volume but St. Francis announced that St. Pierre had just been kicked out of the tribe. (*Rutland Herald* 11/2/1987; compare *Burlington Free Press* 5/1977).

This was not simply ouster from a meeting; a year later, Joan St. Pierre was not allowed to vote at an Abenaki election, because, according to Homer St. Francis, she had been "thrown out of the tribe" (*Burlington Free Press* 10/10/1988).

There have been splinter groups that have left the tribe because they opposed the leadership. These included Homer's niece Connie Brow, who was instrumental in forming the Traditional Abenaki of Mazipskwik and Related Bands in 1995, as well as others in the 1990's (*Burlington Free Press* 10/29/1995, Wiseman 2001:181-86).

There are also examples of pan-Indian attitudes among the Abenakis in previous decades. According to the petition in 1982, "[t]he community, now as in earlier times, has always been receptive to Indian families from anywhere in the northeastern United States and

the border region with Canada” (Petition:158-59). At that time, any Indian, no matter whether he or she was descended from a historical Abenaki group in Vermont, could be welcomed into the group.

In 1995, the Abenaki Tribal Council apparently instituted a major change in the tribal constitution’s criteria for membership. This was undertaken specifically to improve the group’s eligibility for federal acknowledgment (*Burlington Free Press* 11/7/1995). This change reflects vagueness as to the identity of the tribe, both now and in the past. It indicates a lack of certainty over the real shape of the tribe. Its composition was not fixed and identifiable; rather it was subject to alteration by the petitioner. The standards for evaluating Abenaki tribal identity over the years have changed depending on the circumstances. This is the opposite of a clearly defined community whose members know each other and who have been inter-twined as an Indian community since historic times.

### **There Were No Social Ties Between the Bulk of Petitioner’s Ancestors and the Visible Abenakis in Vermont**

In order to satisfy Criterion (b), the petitioner must demonstrate that the social ties that connect the community are broad reaching across family kinship groups. One case summarizes it like this:

Interaction must be shown to have been occurring on a regular basis, over a long period of time. Interaction should be broadly distributed among the membership. Thus a petitioner should show that there is significant interaction and/or social relationships not just within immediate families or among close kinsmen, but across kin group lines and other social subdivisions. Close social ties within narrow social groups, such as small kin groups, do not demonstrate that the members of the group as a whole are significantly connected with each other. (BIA Miami Nation of Indians 1992:5).

In meeting this criterion, the Narragansett provided evidence of an annual meeting to which members who lived outside of the core community returned (BIA Narragansett Indian Tribe of Rhode Island 1982:11). In addition, the Narragansett members showed that they knew a lot about other members. When asked about other members, they could relate where they resided, what their occupations were, how large their family was, and how active they were within the tribe (BIA Narragansett Indian Tribe of Rhode Island 1982:10). In contrast, during John Huden and Gordon Day's forty years of contacts with the Obomsawins, no one in that family ever mentioned any of the Swanton people as fellow members of an Abenaki tribe.

There are also examples from the petition that reveal a lack of social interaction. For instance, "Leo St. Francis, Nazaire Jr.'s brother, remembers a band of twenty to thirty Indians who lived out in the meadow behind Slamon Farm" (Petition:97). However, as he recounted what he saw, he said "we didn't know all of their names." The petitioner describes these people as "totally unassimilated families [ ] who live[d] secluded without contact with the white society," and lived in the marsh (Petition:84). There was no social contact between the St. Francis family and those Indians in the meadow. These people were not known to the petitioner's ancestors by name; they were not part of the petitioner's community. This, and the fact that petitioner's ancestors (if they had any Indian blood) had intermarried with whites for so many generations, reinforces the view that petitioner became fully part of the French-Canadian society of Swanton (Petition:74).

Another aspect of community and social interaction that needs to be established is whether petitioner's ancestors in earlier decades, or centuries, interacted with the individuals identified as Indian at that time. This was a problem that defeated the Duwamish petition:

The petitioner's membership consists almost entirely of descendants from the families of marriages between Duwamish Indians and pioneer settlers. The petitioner did not provide evidence, nor did the BIA's research find any evidence, that revealed that these families interacted with the historical Duwamish tribe or were cohesive themselves. (BIA Duwamish Tribal Organization 1996:6).

The petitioner has not demonstrated that the ancestors who are listed in the Family Descendancy charts ever interacted with the early nineteenth century remnants of the Missisquoi tribe who are described in the petition. It appears they cannot show such interaction. Most of the first generation in the Family Descendancy Charts was born in Canada and did not come to Vermont until the 1840's or later (*see* Table 2 above). They could not have formed a social network or community with the individuals whom the petitioner claims were Indians in the federal censuses of 1790-1830 (Second Addendum).

The Duwamish case also explains the need for continuity between the community identified as a tribe in one decade and the community identified as the same tribe in a later decade. In that case, the BIA compared the names on the 1915 and 1926 membership lists to determine whether the latter group was a continuation of the former, or whether they were two separate groups. The findings stated:

The 1926 membership list was very different from the 1915 membership list of Satiacum's organization. The individuals who appeared on both the 1915 and 1926 lists comprised only 21 percent of the 1915 membership and 19 percent of the 1926 membership. The disjunction between the 1915 and 1926 lists is revealed by the finding that only 6 percent of the members of the 1915 organization, compared to 66 percent of the members in 1926, have descendants on the petitioner's modern membership roll.

There were several differences between the 1926 members and the 1915 members which, considered together, show that the two lists represented two different groups of people. (BIA Duwamish Tribal Organization 1996:7-8).

While the petitioner does not have two historic membership lists to use for comparison, there are various historic documents such as Robertson's Lease, the Durham Grants, membership

lists of Abenaki at Odanak/St. Francis, and the names of individuals who identified themselves as Indian in the federal censuses in the late nineteenth and early twentieth centuries. Not a single one of these lists corresponds with the names of individuals listed as petitioner's ancestors in its 1995 Family Descendancy Charts. A detailed discussion of this appears in the genealogical analysis under Criterion (e) below. The necessary conclusion is that the petitioner is a different group of people from those known as Indian prior to 1930.

### **Summary of Failure of Evidence to Satisfy Criterion (b)**

The evidence shows that petitioner's ancestors did not live in a distinct Indian community within the greater Swanton area. To the contrary, they interacted with the rest of the Swanton area community in the same way that French Canadians did. They held the same jobs, were members of the same clubs, went to the same church, and were buried in the same place. They maintained no unique cultural practices or language. They were fully assimilated residents of Franklin County. By virtue of this assimilation, they had abandoned any distinct Indian identity, if they ever had any: “[A]ssimilation is simply a way of expressing the reverse of the existence of an Indian community” (*Mashpee Tribe*, 592 F.2d at 586).

The people who now claim to be an Abenaki community did not move to Franklin County all at the same time, nor did they come from the same place. There were no social ties that united the visible Abenaki—the Obomsawins and those at Odanak—with the petitioner's ancestors. Despite the fact that they may now present the appearance of being united in a community, the evidence does not demonstrate a distinct community with active

social interactions in earlier decades. The BIA has rightly rejected petitions that simply compared the historical community with the present community:

Roe claims that it is necessary to look only at “endpoints,” apparently taking the position that a Duwamish tribe existed historically and the petitioner claims to be the Duwamish tribe and so exists now. He assumes that similarities at the “endpoints” allow an assumption of continuity between the endpoint [But this is not valid.] . . . past determinations have not accepted the comparison of “endpoints,” as advocated in these studies, as relevant evidence under the regulations.

The regulations require that contemporary evidence demonstrate continuous community and political authority from historical times to the present. (BIA Duwamish Tribal Organization 2001:41).

And so, the BIA should reject the St. Francis/Sokoki evidence under Criterion (b) as insufficient to establish continuous community.

### **Criterion (c) —Political Authority**

On order to meet the political authority criterion of 25 C.F.R. 83.7(c), petitioner must have “maintained political influence or authority over its members as an autonomous entity from historical times until the present.” This criterion is rooted in the U.S. Supreme Court’s statement in *Montoya v. United States* that a tribe must be “united in a community under one leadership or government” (180 U.S. 261, 266 (1901)). Among the aspects of political influence which must be examined are the breadth of the group’s authority. That is, can the leaders “mobilize significant numbers of members and significant resources from its members for group purposes” (25 C.F.R. 83.7(c)(i)). Also, there must be “widespread knowledge, communication and involvement in political processes by most of the group’s members” ( 25 C.F.R. 83.7(c)(iii)). One court described this criterion in this manner:

The people must “follow[ ], adopt[ ] and obey[ ]” the leadership. And the leadership must be “controlling of significant elements in the lives of the people.” . . . If no one follows, then the would-be leader is not leading anyone

and cannot sustain the claim to leadership. (*Mashpee Tribe v. New Seabury Corp.*, 592 F.2d at 584).

The petition admits there was a lack of formal organization for most of the past two hundred years (Petition:86). Petitioner claims this is because family bands were the usual form of organization, with no further structure above them (Petition:159-60). This has not been the case with the Canadian Abenakis, from whom the current petitioner supposedly broke off. They had clear chiefs in the nineteenth and twentieth century as demonstrated by documents such as the “Petition of the Abenakis of St. Francois Against General Emancipation of Indians in the Dominion” signed by Grand Chief of Abenakis in 1874 (Canada, Indian Affairs 1874) and the “Indian Distribution Paylists, Abenakis of St. Francis” signed by Abenaki chiefs in 1893 (Canada, Indian Affairs:1893, *see also* Hume 1991:105). The inability of petitioner to point to any organization outside of family groups between 1780 and 1974 comports with the lack of community during that same extended time period.

### **Vermont Abenaki Silence in the Face of 1950’s Caughnawagha Land Claims**

One glaring example of the lack of political organization and influence in the twentieth century is the absolute silence of any of the petitioner’s supposed leaders in the face of the claims by Caughnawagha Iroquois to lands in Vermont. Organizing and protecting against the loss of tribal lands is a primary governmental or political function of an Indian tribe (*Miami Nation v. U.S. Dept. of Interior*, 255 F.3d 342, 346 (7<sup>th</sup> Cir. 2001)). Evidence that a group has been active in that area is useful in establishing proof under Criterion (c). The Abenakis had the opportunity to speak out in this regard in the 1950’s, but they were silent. Their non-action is similar to a situation addressed in the MaChris case in which the Indian Claims Commission awarded millions of dollars to “descendants of the

Creek Nation for the loss of aboriginal lands” (BIA MaChris Lower Alabama Creek Indian Tribe 1987:14, 27). The MaChris petitioners were “apparently unaware of this award and did not make application to share in its distribution, even though the claims payment was publicized in a local newspaper.” (BIA MaChris Lower Alabama Creek Indian Tribe 1987:14). If a political organization had existed, then this would have been an ideal time for it to communicate with the tribal members and mobilize them to make claims.

In Vermont, two Caughnawagha Iroquois Indian Chiefs came down from the Two Mountains Reservation in Quebec in 1951 and renewed their request to the Vermont State Legislature for compensation for Indian lands.<sup>69</sup> They addressed the State Legislature, which established a commission to investigate the Iroquois claim and present findings to the legislature. As a result, the Governor appointed Charles J. Adams in 1952 to conduct the investigation (*Burlington Free Press* 4/20/1951, 4/19/1952; *St. Albans Daily Messenger*, 11/10/1952). The newspapers had front page stories and photos of the chiefs at the Vermont Statehouse.

One would have expected the Abenakis to speak up in the face of a claim to their own historic lands from a competing Indian group. Logically, either the Abenakis should have joined the claim or opposed it on the grounds that they were the rightful claimants. The only two people who spoke up were Elvine Obomsawin Royce and Gordon Day. They both contacted the attorney who had been assigned to investigate the case for the State. Both of them sought to inform Attorney Adams that the Iroquois had not been the historic tribe occupying Vermont—the Abenakis were. However, they both informed him that the

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<sup>69</sup> This was a renewal of the land claims first asserted in 1798 (discussed above in section *Nineteenth Century, Caughnawagha Claims to Vermont Legislature*).

descendants of this historic Abenaki tribe could be found in Quebec. Neither of them indicated that there was any tribal group of Abenakis living in Vermont at that time.

Charles Adams's notes of his conversation with Elvine Royce of Montpelier describe her as a "full blooded Abenaki," and state that "She seems to think that the Abenakis could refute claim of Iroquois" (Adams 11/21/1952).<sup>70</sup> His notes indicate that she directed him to contact the main body of the tribe at "Odanak, Quebec. Address of Abenaki reservation in Canada. Does not know name of chief." Significantly, Elvine Royce did not direct the attorney to speak to any tribal political leaders in Vermont; she told him to contact Quebec. The implication is that there were no leaders in Vermont.

Around the same time, Gordon Day wrote to Attorney Adams. His letter reads in part,

In the interest of fairness to the people of Vermont who are asked to pay for the claim and to rightful Indian claimants, if any, no action should be taken without thorough research into the history of Indian land titles generally in Vermont. The true story is not contained in any legal documents alone or in ordinary histories or casual historical commentary. It exists in fragments in the writings and minds of a few research archeologists and ethnologists who are not well known outside their own circles. (Day 12/28/1952).

He then suggested that Adams contact Dr. William Fenton, Dr. Arthur C. Parker, Dr. William Ritchie, and Dr. A. Irving Hallowell. Day went on to inform Attorney Adams of the whereabouts of the current descendants of the Abenaki and Caughnawagha tribes:

Whatever the status of Vermont in pre-history, the only Indians whom white settlers found actually living in Vermont were Abnakis, whose descendants now live at Odanak, near Pierreville, Quebec. More aggressive claims by Iroquoian groups should not be allowed to prejudice any claim which the St. Francis Abnakis may have. (Day 12/28/1952).

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<sup>70</sup> Charles Adams later became Attorney General of Vermont; that may account for his papers ending up at the State Archives.

Notably, Day did not direct Adams to contact any tribal organization or tribal leaders in Vermont.

The petitioner's ancestors, the supposed community of Indians in Swanton, made no protest to the Caughnawagha claim. They did not contact Adams. When the *St. Albans Daily Messenger*, the largest newspaper in Franklin County, reported on the presentation of the final report to the legislature, it made no mention of anyone from Franklin County being involved for or against the matter (*St. Albans Daily Messenger* 4/8/1953).

#### **Creation of Abenaki Tribal Council in 1974**

It was not until 1974 that a constitution was adopted and a formal organization for the St. Francis/Sokoki Abenaki was created<sup>71</sup> (Baker 1976:8, Wiseman 2001:156). Fred Wiseman, a member of the petitioner, observed that the creation of a tribal government was very challenging since none had existed before (Wiseman 2001:152). He said the new organization grew out of an awareness created by the "Red Power" movement of the 1960's (Wiseman 2001:152).

It appears that the primary purpose of the organization was to pursue claims against state and federal governments for recognition. It called this work "status clarification," and pursued it through activities related to membership, correspondence with other tribes, and appearances before government agencies (Petition:129). Jane Baker's 1976 Report to Governor Thomas Salmon said as much: "First and foremost is the campaign [by the Tribal Council] toward formal recognition by the State of Vermont which will render the

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<sup>71</sup> The petition says the Council was formed in 1975, but the other documents give 1974 as the date (Petition:123).

membership eligible for application to receive congressionally mandated funds” (Baker 1976:13).

The 1970’s Abenaki tribal organization does not appear to have been primarily formed for the purpose of self-government. Its focus was on obtaining benefits from the state and federal government through recognition. In the Duwamish case, an organization “which existed to pursue claims rather than to provide self-government” was found insufficient to satisfy Criterion (c). (BIA Duwamish Tribal Organization 1996:5, 10).

There is also a significant question as to whether the mid-1970s Abenaki Tribal Council was a voluntary membership organization or the governing body of a pre-existing tribal structure. Jane Baker described the Tribal Council as a “two year old membership organization” that issues cards “verify[ing] that the holder is an Abenaki Indian or descendant of Abenakis” (Baker 1976:11). She reported to Governor Salmon in 1976 that there were 1700 Abenakis in Vermont. However, she also stated there were only 400 card-carrying members (Baker 1976:11). Thus the Abenaki Tribal Council could not even count as members a quarter of the individuals claiming Abenaki heritage. Moreover, Wayne Hoague, the first chair of the Abenaki Tribal Council, stated in 1977 that there were only 176 adult voting members of the group, plus 120 children (Hoague 1/12/1977). In the 1970’s support and membership in the petitioner’s organization was not widespread. Even the petitioner concedes that the creation of a governing body for the group was artificial and unnatural:

Families and individuals long accustomed to taking care of themselves have only gradually come to reckon with the Tribal Council as a significant factor in their lives. (Petition:126).

The newly created Tribal Council of the 1970’s did not have political authority.

## **The Petitioner's Political Organization was Dominated by One or Two Families**

The focus on obtaining recognition and federal money, and the way that federal money was used, became a point of contention within the petitioner's group. In the 1970's, and again in the 1990's, many members of the group questioned whether the St. Francis/Sokoki organization really represented the views of the Abenakis in the region. There was not wholehearted acceptance of the new self-proclaimed tribal government.

The very first chair of the Abenaki Tribal Council, Wayne Hoague, became the first loud critic of the new organization. Although Wayne Hoague had been one of the original organizers of the new government, he stepped down from chair of the Tribal Council in less than one year (Wiseman 2001:152, 154). He was succeeded by Homer St. Francis who served from 1974 to 1980, and would later be chief again (*Burlington Free Press* 7/9/2001).

During the first time period that Homer St. Francis was chief, Wayne Hoague charged that leaders of the tribe were secretive and that tribe members were not told how the federal money is being spent. (*Burlington Free Press* 1/17/1977; Hoague 1/12/1977). As a result of Hoague's criticisms, he was ostracized from the St. Francis/Sokoki Abenaki organization. Not only did Chief Homer St. Francis and Kent Ouimette obtain his removal from the Governor's Commission on Indian Affairs, but they denied him membership in the tribe. This was reported by Mrs. Hoague:

When her husband reapplied for tribal membership—which requires a card issued by the council—“they replied he couldn't prove he was Indian.” Mrs. Hoague said.

“How can they say he's not an Abenaki if the rest of them are all related to him?” she asked. (*Burlington Free Press* 5/1977).

From 1974 to the present, petitioner's organizational politics has been dominated by one or two families struggling for control. For the most part, the St. Francis family has controlled the organization. Mrs. Hoague charged in 1977 that Homer St. Francis was elected "tribal chairman" in an election that was not widely publicized to Abenaki members. She said, "St. Francis was elected tribal chairman by the St. Francis, who were the only ones informed of the meeting" (*Burlington Free Press* 5/1977). Wayne Hoague also complained that several people were named to positions of authority to represent the Abenaki Tribal Council without ever being voted on by the membership (Hoague 1/12/1977). Similar instances of control by one family have weighed against federal recognition under this criterion (BIA MaChris Lower Alabama Creek Indian Tribe 1987:4, 26).

Further disagreements took place within the fledgling Abenaki organization in 1977, again demonstrating that there was no cohesive political leadership as required by the federal regulations. Kent Ouimette, who had helped St. Francis oust Wayne Hoague, himself decided to split off from St. Francis's group. He left his position as administrator of the St. Francis band and joined the "Missisquoi Council," headed by Chief Arthur 'Bill' Seymour (*Burlington Free Press* 10/21/1977). Ouimette wrote to Governor Snelling, saying,

Some of us have found that the present governmental structure of the St. Francis band is incapable of protecting the constitutional rights of the individual, to say nothing of aboriginal rights. (*Burlington Free Press* 10/21/1977).

In fact three of the original organizers broke off in 1977 to form separate groups claiming to represent Vermont Abenakis (Wiseman 2001:157). In 1979, another dissenter, Richard Phillips, also broke away and formed a separate group, The Eastern Woodlands Band of the Abenaki Nation (Petition:131).

Homer St. Francis only stepped down as chief in 1980 when he had to serve a jail sentence (*Burlington Free Press* 9/13/1987). That is when Leonard “Blackie” Lampman became chief. Lampman was chief from 1980 until his death in 1987 (*Burlington Free Press* 5/10/1987). The 1987 election of chief was extremely contentious and surrounded by charges of unfairness. The race was between Lester Lampman, son of the former chief, and Homer St. Francis. One summary of the election read as follows:

The tribal elections of November 1986<sup>72</sup> [sic] were contentious, with emotions high in both the Lampman and St. Francis factions. It was also one of the biggest elections, with both sides doing lots of politicking and bringing voters to the polls. In order to assure the fairness of the election, a tribal election committee was formed, with three from each “side” and Ted Greenia, an “outsider” as head. The vote was confusing. April Rushlow,<sup>73</sup> a member of that committee, remembers the hours of counting and recounting and the problem with ballots that were incorrectly filled out. After the votes were tallied, St. Francis won by the slim margin of three votes. Former interim chief Lester Lampman and community members Joan St. Pierre attempted to have the results of the election voided, citing fraud, in that the incorrectly filled out ballots were not counted. St. Francis denied the recount, and the ballot box was sealed by the committee and stored in the tribal safe. (Wiseman 2001:160).

The new chief quickly consolidated his power. Before his two-year term had ended, he obtained a change in the Abenaki constitution to make him chief for life (*Burlington Free Press* 9/12/1989). St. Francis continued as chief until 1996 when he handed over the position to his daughter April Rushlow (*Burlington Free Press* 7/9/2001). Further changes in the constitution in later years gave Homer St. Francis more control and more certainty that he could keep the role of chief in his family (*Burlington Free Press* 11/7/1995). A similar by-law allowing council members lifetime appointments was adopted by the MaChris in a case

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<sup>72</sup> This appears to be an error; the correct date of the elections was September 1987 as attested to by contemporaneous newspaper articles.

<sup>73</sup> She is the daughter of Homer St. Francis (*Burlington Free Press* 7/9/2001).

which found insufficient evidence of political authority due to the extensive control of the organization by only one family (BIA MaChris Lower Alabama Creek Indian Tribe 1987:4, 26).

The repeated criticism that the St. Francis/Sokoki Abenaki organization was dominated by the St. Francis family and the subsequent changes in the constitution to perpetuate Homer St. Francis and his family members as chief are akin to the self-perpetuating council which existed in the Miami Nation. In that case the court said, the essence of proper tribal political authority is “bilateral political relations between tribal leaders and members.” (*Miami Nation of Indians v. Babbitt*, 112 F. Supp. 2d 742, 750 (N.D. Ind. 2000)). The opposite is a “self-perpetuating council,” where “[o]nly a handful of people did the organization’s work, and they made decisions without consulting, or being influenced by, the members” (*Miami Nation of Indians*, 112 F. Supp. 2d at 750).

In the case of petitioner, dissenters and people who were unable to break into the ruling group by election to the Tribal Council have repeatedly broken off to form other Abenaki groups (Petition:131). The federal regulations state that the political authority criterion may be satisfied by evidence of “widespread knowledge, communication and involvement by most of the group’s members.” Exclusionary practices and the control of decisions by a small family group are contrary to the federal requirement, as borne out by the decision in the case of the Miami Nation, which was unable to demonstrate political authority under Criterion (c).

Attendance at tribal council meetings is one gauge of participation in governance. At the time the petition was first submitted to the BIA, only about 40-50 people attended tribal council meetings (Greenbaum & Wherry 1988:16). This is a small portion of the hundreds

claimed as members. The number of attendees grew to 80-90 prior to the contentious council elections of the fall of 1987, but “attendance fell again after turmoil in the fall to about 40” (Greenbaum & Wherry 16). These figures do not demonstrate widespread involvement or acceptance of the decision-making processes of the group.

Another piece of evidence that would satisfy Criterion (c) would be proof that the tribal organization is able to settle disputes between tribal factions (*Miami Nation of Indians v. U.S. Dept. of Interior*, 255 F.3d 342, 346 (7<sup>th</sup> Cir. 2001)). Where the organization is truly a tribe in which members live in community for generations, the tribal government must settle disputes in a manner acceptable to all. However, where the group is a voluntary organization which individuals may join at will, the disputes need not be settled. Instead, the dissenters disassociate themselves from the group and form a new voluntary organization meeting their needs. That is what happened in Vermont. Voluntary organizations, especially those formed for the limited purpose of pursuing legal claims, do not satisfy the federal requirement for political authority (BIA Duwamish Tribal Organization 1996:10; *Mashpee Tribe*, 592 F.2d at 582, n.3).

The result of the 1987 election and the subsequent constitutional changes was a splintering of the group as people realized they were not being listened to by their political leaders. In the 1990’s, many members of the St. Francis/Sokoki Abenaki group did not accede to the leadership of Homer St. Francis. They formed separate organizations. In 1992 the Northeast Woodlands—Coos Band was formed. Through recruitment that band grew to 700 members (Wiseman 2001:169). In the fall of 1995 three more bands were created.

The first was the Traditional Abenakis of Mazipskwik and Related Bands. It split off from the St. Francis/Sokoki band and took with it a number of officials and employees from

the St. Francis/Sokoki tribal headquarters. Its chair was Connie Brow, a niece of Homer St. Francis, and its members included the former tribal judge Mike Delaney (Wiseman 2001:180-81). The Traditional Abenakis of Mazipskwik “described St. Francis as ‘dictatorial’ and tribal headquarters as a ‘ghost town’ dominated by members of the St. Francis family” (*Burlington Free Press* 10/29/1995). Members of this group wrote to the BIA and explained their dissatisfaction with the leadership of the petitioner. They contended that policies were decided by the Tribal Council which was dominated by immediate family members of the St. Francis family (Delaney 1/22/1996). They told the BIA that “anyone disagreeing with the Chief or Chiefs were politically caste [sic] aside and disenfranchised by the Chief” (Delaney 1/22/1996).

The second group to form in the fall of 1995 was centered in the upper Connecticut River Valley. This one was organized by Tom Obomsawin, Newt Washburn, and others. It became the nucleus of a dissident group in eastern Vermont and western New Hampshire. (Wiseman 2001:181). The third group was headed by David Hill-Docteau of Saxton’s River in southeastern Vermont. He claimed that he, not Homer St. Francis, was the hereditary chief of the Abenaki Nation (Wiseman 2001:181). Further splintering occurred, so that by 2001 there were twelve groups claiming to represent Abenakis in Vermont (Wiseman 2001:186).

With all the dissension and creation of separate groups it is no wonder that an observer from the Cowasuck of North America, which includes the Vermont Abenakis, said that Homer St. Francis “does not speak for the rest of the Abenaki, only his small group” (*Burlington Free Press* 10/29/1995).

### **Summary of Failure of Evidence to Satisfy Criterion (c)**

The petitioner has not submitted evidence of political authority or a political organization governing an Abenaki tribe in Vermont from 1800 to 1974. There is a glaring example of the absence of political authority in the 1950's when Caughnawagha Mohawks laid claim to lands in Vermont. While a new political organization was created in 1974, it appeared to be a separate organization from whatever might have existed in the eighteenth century. As discussed under Criteria (b) and (e), there is no significant overlap of individuals and their descendants between the eighteenth century tribe and the group created in the 1970's.

Moreover, the organization created in the 1970's was not generally accepted as representing all Abenakis in Vermont. In the 1970's and again in the 1990's the organization splintered as people became disenchanted with the chief, disputed his authority, and disagreed with his exclusionary practices. The fact that petitioner might be able to point to a few events since 1974 as evidence of political authority is not enough to satisfy Criterion (c) since this is not evidence of a continuous political government from historical times to the present.

### **Criterion (e)—Descent from Historic Tribe**

To qualify for federal acknowledgment under 25 C.F.R. 83.7(e), the petitioner's membership must consist of "individuals who descend from a historical Indian tribe or from historical Indian tribes which combined and functioned as a single autonomous political entity." It is essential that members trace their genealogy back to a group of people known to be a historical tribe. Although it is not necessary to trace ancestry to the earliest history of a

group, petitioner must trace it to “rolls and/or other documents created when their ancestors can be identified clearly as affiliated with the historical tribe” (BIA Nipmuc Nation #69A, 2001:202).

A model example of proof under Criterion (e) is the Huron Potawatomi case. There all members of the tribe could prove descent from people listed on a 1904 roll of Potawatomi Indians prepared as a result of a federal court decision (BIA Huron Potawatomi 1995:3, 21). Standard genealogical documentation such as birth certificates and other vital records show the line of descent from the 1904 roll to the present.

In contrast, the Southeastern Cherokee Confederacy was seriously deficient in its proof of historical descent. For many of its families, the evidence of Indian ancestry consisted of nothing more than a statement that they “knew that there was ‘Indian’ in their family,” but they did not know what tribe or which relative was connected to it (BIA Southeastern Cherokee Confederacy 1985a:64). The Southeastern Cherokee tried to excuse this lack of evidence of Indian ancestry, claiming, like the St. Francis/Sokoki Abenaki “that they and their immediate forebears had to suppress their Cherokee heritage under threat of reprisals.” The Southeastern Cherokee asserted “that they lived in denial of their Indian heritage, and were compelled never to mention it.”

The BIA responded to this argument as follows:

While this claim is probable and in consonance with the general history of the area during the period in question, it is impossible to verify. In fact, it is impossible to verify whether all those members of the SECC who claim Indian ancestry are actually Indian descendants. (BIA Southeastern Cherokee Confederacy 1985a:14).

When the Southeastern Cherokee tried to fill this gap with personal affidavits from current members, the BIA rejected this material “as insufficient evidence of Indian heritage since

they were of recent origin and unsupported by other corroborating evidence” (BIA Southeastern Cherokee Confederacy 1985b). The lack of documentary evidence in the Southeastern Cherokee case was summed up this way:

Little if any documentary evidence could be found to document a member’s Indian heritage. This is undoubtedly due to the fact that their ancestor(s) did not maintain a relationship with their hereditary tribe(s) but rather mingled with non-Indians or were assimilated into the non-Indian community. (BIA Southeastern Cherokee Confederacy 1985a:8).

Without sufficient evidence of Indian ancestry traced to a historic tribe, federal tribal acknowledgment cannot be granted. The reason that individuals may not know their ancestry is immaterial; the BIA requires that the group have a distinct Indian identity that can be traced in behavior and lineage to a historic tribe.

### **An Overview of the Progenitors**

The petitioner has submitted various charts and lists of people who it claims are Abenaki Indians of Franklin County. These lists have the quality of shifting sands—ever changing and impossible to grasp. In the 1982 submission, petitioner included family charts of approximately fifteen extended families (Petition:62-65). Petitioner also provided a small group of names from the federal censuses from the first half of the nineteenth century to demonstrate the presence of Abenakis in northwestern Vermont. In 1986 petitioner vastly expanded its submission and included names of hundreds of families from the early nineteenth century (and into the twentieth) who it claimed were Abenakis (Petition Addendum Appendices). The 1986 list of names from the 1800 through 1830 censuses was over five times as large as the previous list submitted in 1982. The number of names that

petitioner gleaned from the 1840 census and labeled as Indian grew fifteen fold between its 1982 and 1986 submissions (Petition:62-65; Petition Addendum, Appendix 1B:28-49).

The narrative portion of the 1986 Petition Addendum attempts to trace connections among family names that appear similar in historic Abenaki records and early nineteenth century birth and marriage records. While this complicated web may look interesting, it is entirely irrelevant to the present day community. The web it weaves is limited to the nineteenth century. The narrative does not connect the families who appear in the records in 1800 to 1830 with the petitioner's family descendants in the 1995 Family Descendancy Charts. For example, Madam Crapo who figures in the narrative does not appear on any of the Family Descendancy Charts as an ancestor (Petition:54; Petition Addendum:24, 26). In addition, two families described as front families on the island of North Hero, the Patnodes and Camerons, are not listed as ancestors of petitioner in the Family Descendancy Charts either (Petition Addendum:306, 326). This might be due to the fact that they may actually be French Canadian families (*see* DeMarce 1994).

Most recently, in December 1995, petitioner submitted twenty Family Descendancy Charts. It declared that these genealogies replaced the earlier material that had been submitted in 1982 and 1986 (Second Addendum:1). Compared with the 1986 material, this drastically cut back on the number of individuals claimed as members of the tribe. Each chart traces the descendants of a different progenitor. The families are substantially the same as the families shown in the 1982 papers filed by petitioner (Petition, Part VI). Three couples listed as progenitors in the 1982 papers have been omitted from the 1995 filing, and five new families have been added.<sup>74</sup>

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<sup>74</sup> The following progenitor couples and their descendants shown in the Family Charts in Part VI of the 1982 Petition do not appear as separate family lines in the 1995 Family Descendancy Charts:

We assume that the petitioner is claiming that each of the twenty progenitors is an Abenaki Indian of the St. Francis/Sokoki Abenaki Tribe of Vermont. Otherwise there would be no point in providing the charts. Presumably the living descendants on these charts comprise the current membership of the St. Francis/Sokoki Abenaki Tribe of Vermont. Of course, due to privacy rules, the State has not had access to the petitioner's current membership list. Three of the five progenitors that have been added seem to be ancestors of individuals who married into some of the families shown in the 1982 charts. *See, e.g.*, Desmarais family (some Demers from this family married Gardners); Hakey family (Florence Hakey married Nazaire St. Francis); Belrose family (Mary Belrose married William Medor); LaFrance family (a LaFrance married a Vansette descendant of the St. Laurent family).

The two other new progenitors are noteworthy in that they are the only two with proven Abenaki heritage: Jean Nepton and Simon Obomsawin.<sup>75</sup> If these two were added to lend legitimacy to the claims of Abenaki descent, the effort is transparent. The ancestors of these two families did not live in Swanton and did not maintain close ties with the rest of the petitioner's families. Jean Nepton was born in Massachusetts and lived in Canada. His descendants do not appear in Vermont records for six generations, hardly qualifying them as part of the Swanton community. Simon Obomsawin was born at Odanak/St. Francis. His descendants, William and Marion, show up repeatedly in the research by Gordon Day and John Huden—but never with any ties to any community in Swanton. (In fact they are not

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Levi Bellvue/Mary Gonyea, Charles Guyette/Aurilla Bushey, Thomas Lapan/\_\_\_\_ Turner. Occasional members of these families do appear as spouses of people in other families that are traced.

<sup>75</sup> The other three progenitors added in the 1995 charts are Margaret Gibeau, Antoine Edward Hance, and Theodore Ouimette.

even included on the Family Descendancy Charts submitted by petitioner. Only Simon's daughter Elvine is shown there.) Their ties were strictly to Abenakis at Odanak/St. Francis and Albany, N.Y. Petitioner has not cited any sources establishing Abenaki identity for the other eighteen progenitors. Presumably this is because their "ancestry is assumed," rather than proven, as petitioner stated was the case for the Louis Gardner line (Petition:86).

According to these Family Descendancy charts, the progenitors were born at various times between 1790 and 1900. Their births are concentrated between 1800 and 1839. Eight of them were born at the beginning of this period, between 1800 and 1817, and another five were born at the end—between 1830 and 1839. The remaining ones are scattered, with three born between 1790 and 1800, and four born between 1850 and 1900.<sup>76</sup> The first thing that becomes apparent from this selection is that the progenitors are not the basis of a community cross-section at a single point in time. This means that the progenitors were not all taken from one historic list and traced forward in time to the present. Rather, it appears that the list was prepared in reverse, starting from the current membership and tracing back as far as possible.

Since there are no lists of tribal members in Vermont after Robertson's Lease in 1765, the petitioner tried to reconstruct lists from the early census records. Each of its submissions to the BIA presented a different list of names. The rest of this section examines those reconstructed lists and the weaknesses in petitioner's attempts to connect them to the present day members.

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<sup>76</sup> Margaret Gibeau's birth date is estimated to be around 1900, since she was married in 1924; the date was redacted from the copies provided to the State. Michel St. Francis's birth is estimated to be approximately 1800.

## **Moody's Genealogical Work is Incomplete and Speculative**

John Moody's 1979 manuscript claimed that the present day Swanton group was descended from the historic Missisquoi. However, he never fully supported his claim with genealogical research, a point made by Gordon Day upon reading Moody's manuscript. Day called on him to focus on the genealogies:

You remember that I never said there were not Abenaki descendants on Lake Champlain. I said there were. I didn't realize how many. From the time of the first propaganda by Ronnie Cannes and company my position about the Abenaki "Nation" at Swanton was: examine their genealogies and see instead of taking anti-polar positions and arguing. (Day 4/27/1979).

Instead of clear genealogical lines between the present-day Abenaki petitioner and the historic tribe, Moody relied upon hypothetical connections that he described in his manuscript. Interestingly, these theoretical links were not incorporated into the Family Descendancy Charts submitted by petitioner in 1995.

Three examples of Moody's method of drawing conclusions from incomplete evidence illustrate the deficiencies in his analysis. First, in some instances Moody took names from the present group of petitioners and noted the similarity to names of Abenakis found in historic church records. Then without tracing the generations in between he drew the conclusion that the two were related. One example is with the 1800 marriage record found in Chambly, Quebec, of "Marie Morins, Abenakis of the Saint Francis village." Moody asserted this name developed into the following contemporary variations: Moricette, Morisseau, Molisse, Morrisey, Morris, and Morits (Moody 1979:43, n.22). While this is intriguing speculation, it is not proof of Abenaki heritage.

Second are instances in which Moody documented Indians (not necessarily Abenakis) living in Quebec near the Vermont border. While these observations are interesting in

themselves, they do nothing to establish that the present day petitioners are Abenakis. For instance, Moody wrote of the Wabisan family, but there is no such family in the 1995 Family Descendancy Charts (Moody 1979:45). He wrote, too, of “Catherine, Indienne” marrying Pierre Lanoue, but acknowledges that she might not be Abenaki (Moody 1979:46-47). Moreover, she did not show up in the Family Descendancy Charts of the petitioner.

The third misleading assumption that infused Moody’s genealogical work is his unquestioning acceptance of the current day petitioner as Abenaki. He traced the current members back through the records and then declared he had found the enclaves of Indian families. However, he declared the earlier generations to be Abenaki only because their descendants claim them to be. And, he leapt to make connections between these family names and others that appear on proven rolls of Odanak Abenakis.

So, for example, he wrote that:

The majority of families discovered so far lived on Missisquoi Bay and Lake Champlain with the other areas being maintained by individual families at different periods from 1820 to 1850. Not one of the families is cited as being “Indian,” “Abenaki” or anything of the kind. The names are variants of those familiar at Odanak like Panadis (Benedict), Lazare, Gonzague, Benoit, Laurent, Denis, Saint Denis, Marie and Maurice in various combinations with names developed exclusively at Missisquoi like Campbell, Peter, Coulomb-Cadoret, and Francis. (Moody 1979:49).

In this passage, Moody’s claim that the names are “variants of those familiar at Odanak” indicates that he was unable to find an exact match of names in the Odanak records. It suggests that he only found names in the Odanak records that could be construed to sound similar to Vermont names. For example, he traced one family named Banady or Parody through civil and church records from 1826 to 1860 and proclaimed theirs to be “unmistakable Abenaki names,” despite the fact that they “were not once acknowledged as such in any of the records cited, Catholic or civil” (Moody 1979:54). His assertions were

based on name similarity, rather than genealogical links or Indian identification in the records.

Another instance of Moody's attribution of Abenaki identity to ancestors, without proof, occurred in his description of the Freemore, St. Laurent, and Coulomb families. He wrote that he had found no Freemore name at Odanak and thus could not substantiate it as Abenaki through any such association (Moody 1979:57, n.34). However, since there were Freemores who married into other families whose descendants are among the current day group, he declared they are Missisquoi Abenaki. He knew there were Laurents at Odanak, so when he found Saint Laurents in Vermont he decided their name must have been changed by a priest (Moody 1979:57, n.35, 59, n.36). He did not consider that it could just be a French name on its own, though Gordon Day advised him as much (Day 8/2/1977).<sup>77</sup> Likewise, while he wrote that "Coulombe or Collaret is also an unsolved connection thus far," he speculated that the old Missisquoi name Cadenait or Cadenarat is sufficiently close to Cadoret and Collart to suspect a connection there" (Moody 1979:57, n.35). Despite these expressions of uncertainty, he went on to assert, totally without proof, that Cordelia Coulomb was an Abenaki woman (Moody 1979:57-58).

Moody's analysis of the St. Francis family was also full of guesswork. He spun a tale of name changes to connect Mitchell St. Francis with "Charlotte, widow of the late chief of the Abenackque Nation at Missisque" who signed Robertson's lease in 1765 (Moody 1979:58-59, n.36). His jumping off point was the statement that "Michael, or Mitchell (Michel) St. Francis's point of origin is less clear," and that he was unable to locate the town from which he came. He was obviously unaware of the marriage records of Mitchell St.

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<sup>77</sup> In that letter, Day told Moody that "Saint-Laurent and Coulomb are French names, and I have never found them as the names of Abenakis."

Francis's sisters, which clearly state that his parents lived in Iberville County, Quebec (Drouin Genealogical Institute 1989).

Moody also implied that Mitchell St. Francis's mother had dark Indian skin, by pointing to an unrelated woman in another town with the surname St. Francis who is listed on the census as black (Moody 1979:58, n.36). He offered this as evidence that Mitchell's family was Indian. However, there is not a shred of evidence that this black woman is related to Mitchell's family. Mitchell's mother and sister are listed on the 1860 census in Swanton, but no color is given. Indeed the census enumerator for that district left the column for color blank for everyone, suggesting all were white. Mitchell St. Francis's mother's and sister's birthplace is given as Canada and they live in a house owned by another Canadian—Paul Charland. The black woman mentioned above is not another of Mitchell's sisters—she is far too old. Her age is 50, the same as Mitchell's mother. Moreover, her birthplace is given as Vermont, and she is specifically listed as a domestic. Mitchell's mother and sister have no occupation listed, though the census taker clearly indicated “family domestic” when appropriate on that same page. A careful examination of the records discloses the errors in Moody's speculations (U.S. Bureau of the Census 1860a, 1860b). This raises serious doubts about his conclusions.

### **Petitioner's Family Charts Do Not Trace Back to Any Historic Lists of Known Abenaki Indians**

The best type of evidence of descent from a historic tribe would be genealogical material showing descendants from Indians listed on an official roll or membership list (BIA Nipmuc Nation (#69A) 2001:205-06). The federal regulations suggest the use of “rolls prepared by the Secretary [of the Interior] on a descendancy basis for purposes of distributing

claims money, providing allotments, or other purposes” (25 C.F.R. 83.7(e)(1)(i)). Although there are no rolls of Abenakis maintained by the State of Vermont or the United States government, there do exist two historic land documents, three historic Canadian rolls, and one petition to the Canadian government: Robertson’s Lease, the Durham, Quebec, land grants, 1832, 1873 and 1875 censuses of the Abenakis of Odanak/St. Francis, and an 1842 petition to Canada. To determine whether the current members are descendants of the historic Missisquoi tribe, we compared the names on these historic lists of known Abenaki Indians with the names of the ancestors shown on these charts. Not a single name matched.<sup>78</sup>

The first document examined was Robertson’s lease, dated 1765 (Day 1981b:68). This is the only known list of Abenaki Indians in Missisquoi. None of the twenty Abenakis listed in that lease appears in the 1995 Family Descendancy Charts of the petitioner. Despite this, the 1986 Petition Addendum asserted that: “Genealogy linking eight Central, Small and Ancestral families in the present community directly back to Robertson’s lease have emerged from the data” (Petition Addendum:326-27). As support for this claim, the petition cited the family histories provided in “Section V,” which were contained in Addendum C (Petition Addendum:iii; 327, n. 1472). However, Addendum C was apparently never provided to the Branch of Acknowledgment and Research (U.S. Bureau of Indian Affairs 10/23/2001). When genealogies were finally provided to the BIA, in the form of the Family Descendancy Charts in 1995, no indication of any connection to Robertson’s Lease was indicated in any of the family charts. In fact, four families that were listed in the Petition Addendum as having

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<sup>78</sup> This analysis, and those that follow, was based on the names that were disclosed in the charts in response to the Attorney General’s Office request under the Freedom of Information Act. Obviously, names of living individuals were redacted from the 1995 Family Descendancy Charts. This had no effect on the analyses, since we made the comparison based on *ancestors* of living members, not the current members themselves.

genealogies linked “directly back to Robertson’s lease” are not even included in the revised genealogies of present-day petitioner: LeDoux (Peckenowax), Mitchell, Crapo, and St. John (Compare Petition Addendum:327, n. 1472 and Family Descendancy Charts). Apparently, the contention that the present-day families can be traced to Robertson’s Lease has been dropped, perhaps because there was no real evidence to support it.

The second document examined was the 1805 grant of land in Durham, Quebec, to the Abenakis who had lost their lands at Missisquoi (Canada, Indian Affairs 1805,<sup>79</sup> Day 1981b:60-61; Charland 1964:175-76). If the Missisquoi Abenakis left Vermont at the time of the American Revolution and sought refuge in Canada among their kinsmen at Odanak/St. Francis, then their names should appear in this grant. However, none of the grantees shows up in the Family Descendancy charts of petitioner.

In 1832 a census was conducted by the Canadian authorities of the Abenaki village at Odanak/St. Francis (Canada, Indian Affairs 1832). It listed the names of the heads of households. In 1842 the Abenakis of Odanak/St. Francis sent a petition to the government of Canada. This petition was signed by the chiefs and warriors of Odanak (Canada, Indian Affairs 1842). Since the migration of petitioner’s ancestors to Swanton did not really start in earnest until the 1830’s and continued slowly through the 1940’s, these lists should show the names of Abenakis who had not yet left Odanak. A comparison of the names on these two lists with the Family Descendancy charts reveals no matches. The surnames do not even correspond, except for the Obomsawins.<sup>80</sup>

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<sup>79</sup> The title given to the documents in the file is “Saint Francois Agency—Correspondence Regarding an Abenaki Woman’s Claim to a Lot in Durham Township as Part of Inheritance, Forty Years Later,” and it includes a copy of the 1805 Durham Grant.

<sup>80</sup> The only other name that is somewhat similar is that of Hannisse, which one might imagine could be the same as Hance. However, the Family Descendancy Chart for the Hance family does not

The next available lists consulted were two censuses of the Abenaki village at Odanak conducted in 1873 and 1875 (Canada, Indian Affairs 1873, 1975). Although these lists are late in some ways, they are unique in that they include specific identification of the members of the Abenaki tribe who lived in the United States. Thus, if there was an Abenaki family that was temporarily living in the United States, or had recently moved there, it should show up on this list. None of the Abenaki Indians listed as residing in the United States corresponds with any on the people on petitioner's Family Descendancy charts.

Moreover, since a number of the families in the Family Descendancy charts did not migrate to the United States or settle in Swanton until the late nineteenth century, there should be indications of those families on the 1875 census of residents of the Odanak/St. Francis reserve. A check of all the names on the 1875 census again came up empty: none of them appears in the petitioner's charts as ancestors of the present day group. The inescapable conclusion from these comparisons is that the current day petitioner is not descended from the historic Missisquoi tribe of Abenaki, or from the Abenaki at Odanak/St. Francis. Without evidence of descent from documented lists of Abenakis, the petitioner cannot establish proof under Criterion (e). This same deficiency undercut the Nipmuc claim for acknowledgment (BIA Nipmuc Nation (#69A) 2001:207).

### **Petitioner's Family Charts Do Not Include Anyone Identified by Federal Census as Indian From 1870 to 1910**

There is another way to examine the evidence. It is to check to see whether the individuals identified as Indian in Vermont in the federal census records are ancestors of the

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present any evidence of this connection. Furthermore, the petition claims that the Hance family derives its name from Annance (Petition Addendum:343).

petitioner. The names of the heads of Indian households enumerated in the 1870 federal census are as follows:

COWIN, William

JACKSON, Dennison

JACKSON, John

LARMONT, Mary

LIGER, Lewis

POQUETTE, Thomas

(U.S. Bureau of the Census, Index 1870). Even giving latitude for misspellings, none of these names shows up in the Family Descendancy Charts.

A review of the 1880 federal census for individuals identified as Indians in Vermont reveals the following names:

JACKSON, Dennis, Salina, Edward, Fred, Henry, and Nellie

EMORY, Josiah and Lucy

KOSKA, Franklin and Franklin

BOMSAWIN, William and Mary

(U.S. Bureau of the Census, Index 1880). None of these names shows up in petitioner's Family Descendancy Charts.<sup>81</sup>

There is no index of the 1900 or 1910 census, so it was impractical to comb the microfilm records for all counties looking for the individuals identified as Indian. The

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<sup>81</sup> William and Mary Obomsawin do not show up in the petitioner's Family Descendancy Charts. Only Simon Obomsawin appears there, and he did not come to the U.S. until the early twentieth century.

summaries of the 1900 census gave no Indians in Franklin or Grand Isle counties (U.S. Bureau of the Census 1901). Since any other Indians listed would not be part of the community in northwestern Vermont, there was no reason to search for their names. Limiting the search in 1910 to Franklin County,<sup>82</sup> the following names appeared as one household:

			Age	Birthplace	Father's Birthplace	Mother Birthplace
ROBERTS,	Frank	head	33	Vermont	Fr. Canada	Vermont
	Nellie	wife	22	Fr. Canada	Ireland	Fr. Canada
	Susan	daughter	7	Vermont	Vermont	Fr. Canada
	Francis	daughter	5	Vermont	Vermont	Fr. Canada
	Lillian	daughter	5 mos	Vermont	Vermont	Fr. Canada
HANCES,	Edward	grandfather	92	Canada-Indian	Canada-Indian	Canada-Indian

(U.S. Bureau of the Census 1910). The grandfather, Edward Hances, corresponds pretty closely with the Antoine Edward Hance who is progenitor of the Hance line in the Family Descendancy Charts. However that Family Chart submitted by petitioner in 1995 includes no grandchildren with the surname Roberts. So, even if this Indian family lived in St. Albans in 1910, it did not keep in touch with the petitioner, and is not a part of the petitioner's alleged tribal group.

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<sup>82</sup> There were no Indians listed in the summary tables for Grand Isle County in the 1910 U.S. census.

### **Petitioner's Other Lists From Censuses Are Speculative**

We can also examine the self-created lists that the petitioner compiled from the U.S. federal census records in Vermont to test this conclusion further. The federal censuses prior to 1860 did not use a separate code to indicate Indian race in their enumerations. However, the petitioner extracted the names of those it thought were Indians by making assumptions based on similarity of names or occupations (Petition:62-65). This method is not entirely reliable. It is not enough to simply match a surname and thereby claim descent: “Name recognition is not sufficient evidence on which to base one’s ancestry” (BIA Southeastern Cherokee Confederacy 1985a:65). Nonetheless, petitioner listed the names of the individuals who it believed were Abenakis in Franklin and Grand Isle Counties. In the 1810, 1820, 1830, and 1840 lists of names provided by petitioner in its 1982 submission there is not a single one who appears as an ancestor in the Family Descendancy Charts supplied in 1995 (Petition:62-65, Davis Affidavit, Attachment A:4-5).

At first glance, the 1800 census appears to reveal one possible match in John Moritz. (Petition:62; Family Descendancy Chart, John Morits line). However, the 1800 census only lists heads of households. The John F. Morits who is shown as a progenitor in the Family Descendancy Charts was born in 1790. He would have been only 10 years old in 1800—not old enough to be the head of household. So, these cannot be the same person.

The petitioner expanded its lists of Abenaki names from the 1800 census in its 1986 submission. Whereas the 1982 petition listed five and fifteen families in 1800 and 1810 respectively, the 1986 material listed 38 and 96 families which petitioner contended were Indian (Petition:62-63; Petition Addendum:28-34). There are also some curious changes between names from the censuses submitted by petitioner in 1982 and 1986.

For example, in 1982 petitioner asserted that the following were Abenaki names found on the 1800 census:

Simon Bumson, North Hero

John Battis, Middle Hero

Nathan Canance, Highgate

John Moritz, Highgate

(Petition:62). In 1986 petitioner did not list *any* of those names as Abenaki. Instead, its greatly expanded list of names found on the 1800 census included the following:

Simon Burnson, North Hero

Nathan Canard, Highgate

John Minels, Highgate

(Petition Addendum:30). This is just one example of the transformation of names that occurs throughout the petitioner's submissions. It plants considerable doubt over the reliability of petitioner's lists of "likely" and "confirmed" Abenakis extracted from the census (Petition Addendum:26). One wonders which list is a correct transcription of the census documents. Is the absence of John Moritz from the 1986 submission a realization that he is really John Minels? Or, is his absence due to a discovery that he is not Abenaki, or not even the same John Morits as the one listed as a progenitor in the Family Descendancy Charts.

All these questions are compounded by the fact that a comparison of the "likely" and "confirmed" Abenaki names on the 1986 Petition Addendum from the 1790, 1800, and 1810 censuses with the names in the 1995 Family Descendancy charts once again turns up no matches. There is simply no evidence that the families of the petitioner descended from the

people who they claim were Abenaki Indians living in northwestern Vermont at the beginning of the nineteenth century (Davis Affidavit, Attachment A:4-5).

### **Petitioner's Evidence of Indian Births is Contradicted by the Original Records**

As part of its evidence of Indian identity and ancestry, petitioner included a list of twenty individuals who it claims “are all identified as mixed or Indian-White in the Swanton birth records during the first two decades of this [twentieth] century.” (Petition:211, Appendix E (listing births from 1904 to 1920)). John Moody made a similar statement regarding the same time period, though he claimed there were thirty such individuals (Moody 1979:64). An examination of the original birth records in the Swanton Town Clerk's Office belies both these claims.

Births in the State of Vermont during this time period were reported on standard forms provided by the state. The forms required that the child's color be indicated by striking out words from a list of choices, leaving only the applicable color or race. The list was comprised of the following five choices: White, Black [Negro or mixed], Indian, Japanese, and Chinese. In some instances the person filling out the form drew a separate line through each inapplicable word; these are clear markings and unambiguously indicate the child's race. In other cases the person used a slanted line to strike through two or more colors at once; the intention of the recorder in some of these is not always obvious. The information on many of these birth records was provided by the child's father; only a few indicate a physician as the informant. Each form includes a place for the informant to sign, thereby certifying the accuracy of all the information provided. Copies of the twenty birth

records for all of the individuals in petitioner's list are included in the State's Exhibits (Swanton, Vermont, Town Clerk 1904-1920).

Although petitioner asserts that all of the twenty births listed in its Appendix E were identified as mixed or Indian-White in the Swanton birth records, the original birth certificates for eight of them unmistakably identify the individuals as White. Another five of the twenty birth records do not identify the race or color of the individual at all: they either crossed out all colors or crossed out none. That leaves only seven of the twenty as possibly identified as Indian-White because of the way in which the lines were drawn through the list of colors. Only four of these are individuals who appear in the petitioner's Family Descendancy Charts; the other three are unrelated to the petitioner and are thus irrelevant. So petitioner's attempt to prove Indian ancestry through twenty birth records from 1904 to 1920 really amounts to only four birth records that appear to indicate Indian-White race.

However, even for these four individuals, the assertion that they definitively have Indian ancestry is exaggerated. That is because the birth records of these individuals' siblings from the same time period clearly indicate their race as White. Two examples illustrate this. One is the birth record of Olive Cota. Seen in isolation, this record suggests she is Indian-White. However, the records of six of her siblings born during in the eleven years following her birth unmistakably indicated their race as White. Moreover, the children's father signed three of these records himself (Swanton, Vermont, Town Clerk 1904-1920).

The same is true of Emma St. Francis. While the person filling out Emma's birth record may have meant to cross out both Black and Indian with one small vertical line drawn on the form, he did not draw the line fully through the word Indian. Therefore, one could argue, as petitioner does, that the informant intended to leave both the words Indian and

White untouched, designating the child as Indian-White. To better determine which was intended one can examine the Swanton birth records for three of Emma's siblings (Swanton, Vermont, Town Clerk 1904-1920). All three of the siblings born in Swanton in the three years immediately following Emma's birth have records clearly indicating their color as White. Two of these birth records list the father, Michel St. Francis, as the informant. Those two records have clear horizontal lines striking through the inapplicable races, leaving no doubt that the child's color is reported as White. This bolsters the conclusion that the person filling out Emma's birth certificate did not draw the line quite far enough through the word Indian, even though he meant to. Taken together, this evidence strongly implies Emma St. Francis was White. And indeed, that is how the handwritten copy of the birth record appears in the state's central repository of Vital Records in Middlesex, Vermont (State of Vermont, Public Records Division 1904-1941).

The following table summarizes the markings on the twenty birth records listed in petitioner's Appendix E, along with information from the Swanton birth records of those individuals' siblings from 1904-1920, information found in the state's central depository of Vital Records, and the petitioner's Family Descendancy Charts.

Table 4

## Analysis of Swanton Birth Records Cited in Petition Appendix E

Name	Clearly marked as White	All or none crossed out	Ambiguous	Appears marked as white and Indian	Siblings clearly White	Vital Records shows as White	Not in Family Descend. Charts	Possible Indian in Petitioner's Family Charts
Brow, Clarence	X				X	marriage		No
Brow, Leonard James	X				X	birth and birth of daughter		No
Brow, Raymond	X					marriage death		No
Brow, William	X				X			No
Hoague, Delia Genevin	X							No
Janes, Marion Alice	X						X	No
Perry, Violet May	X						X	No
Vincellette, Fred Harry	X							No
Bohannon, Clarence A.		X					X	No
Brow, Harrison (Henry)		X			X	marriage		No
Brow, Loretta		X						No
Goodreau, Mary Eva		X					X	No
Hakey, Mitchell Henry		X				marriage, father's birth		No
Grignon, (male)			X				X	No
Curtis, (female)				X			X	No

Name	Clearly marked as White	All or none crossed out	Ambiguous	Appears marked as white and Indian	Siblings clearly White	Vital Records shows as White	Not in Family Descend. Charts	Possible Indian in Petitioner's Family Charts
Duval, Ernest				X		birth death and mother's death	X	No
Brow, Leonard				X	X	birth marriage death		No
Brow, Blanche				X	X	birth marriage		No
Cota, Frances Olive				X	X			No
St. Francis, Emma				X	X	Birth		No
TOTALS	8	5	1	6	8	9	7	0

In the petitioner's discussion of these twenty birth records, it declared these children were identified as Indian-white in the records (which was inaccurate) and said this was partly due to the influence of midwife Cordelia Brow. The petitioner claims she was "by all reports proud of her Abenaki heritage" (Petition:211). On closer examination, this assertion does not hold up. Not only are most of the twenty individuals listed in petitioner's Appendix E indisputably identified as White in the records, but five of the seven grandchildren of Cordelia Brow who appear on that list are not recorded as Indian-White. Because of the petitioner's reliance on this evidence and the large number of descendants in the petitioner's lists who come through this line, this issue is worth looking at in detail.

Cordelia Brow is individual #20 on the petitioner's St. Laurent Family Descendancy Chart. Petitioner assigns her a prominent place in the early twentieth century history of the petitioning group (Petition:74-75, 211). There are three children of Cordelia's son Henry (#92 on the St. Laurent Family Descendancy Chart) in the list in Appendix E: Leonard

James, William, and Harrison (Henry) Brow. The records for Leonard James and William indicate they are White. The record for Harrison has all colors or races crossed out, indicating nothing. In addition, the record for Eleanor, another child of Henry born during this time period, but omitted from petitioner's list, indicates she is White. All four of these birth records list the father Henry as the informant. His name appears on the signature line certifying the accuracy of the records. While petitioner may claim that Cordelia Brow was proud of her Abenaki heritage, and that she raised her children with an Indian identity, there is no indication in these birth records that her son Henry identified as Indian in any way (Petition:74). These four birth records, which he signed, do not list his children as Indian (Swanton, Vermont, Town Clerk 1904-1920).

Two children of Cordelia's son Edward (individual #90 on the St. Laurent Family Descendancy Chart) are included in the list of twenty in Appendix E: Clarence and Leonard. Their father was the informant for both of their births. One indicates the child is White; the other appears as Indian-White. However, a third child, Lain (Lillian) was born to Edward during this time period, and her record lists her as White (Swanton, Vermont, Town Clerk 1904-1920). She is not included on petitioner's Appendix E.

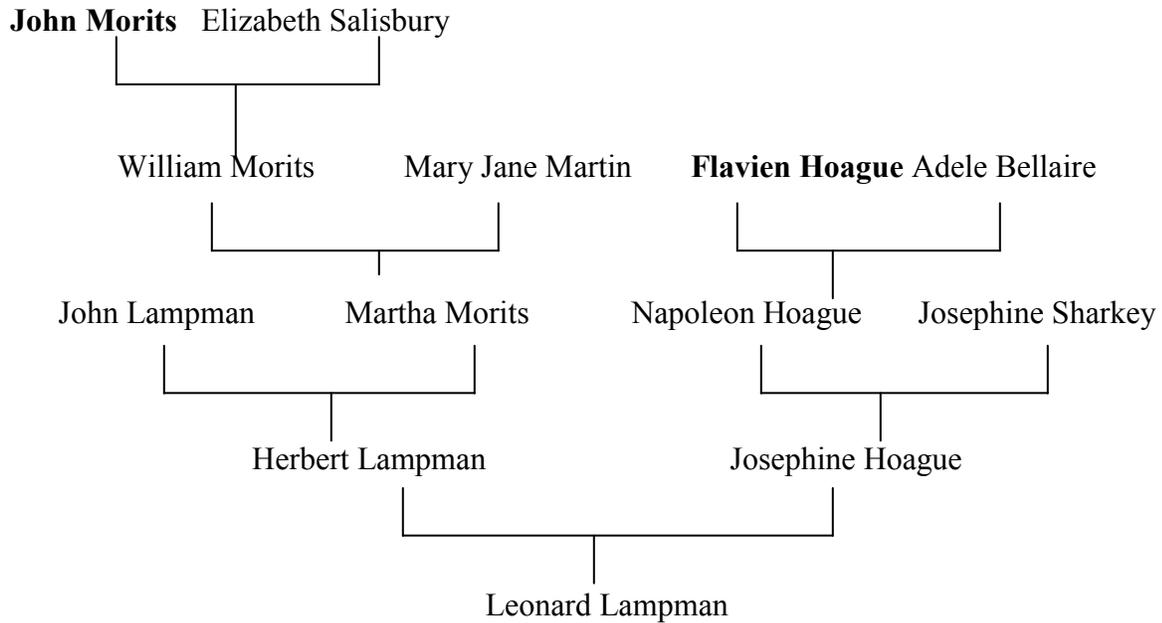
A third set of grandchildren of Cordelia appears on Appendix E. These are the children of Cordelia's son James (individual #93 on the St. Laurent Family Descendancy Chart)—Blanche and Raymond Brow. Both of their records indicate their father was the informant, and his name appears in the signature line. One clearly indicates the child is White; the other appears as Indian-White. Again, these erratic, and sometimes ambiguous, notations on birth records are weak evidence of Indian identity (Swanton, Vermont, Town

Clerk 1904-1920). They are not consistent with the petitioner's account of a family that strongly maintained its Indian heritage (Petition:74-75).

In sum, these twenty individuals from petitioner's Appendix E do not provide the supporting evidence of Indian ancestry that petitioner attributes to them. These individuals have been extensively examined because of the petitioner's reliance on this list (Petition:74-75, 211). Petitioner made no mention of any concerns about hiding Indian identity during this time period (Petition:75). Indeed, the argument, frequently put forth by petitioner, that Indians had to disguise their identity due to discrimination, should not carry much weight during these years, which predated the Eugenics Survey of Vermont. The fact that these records, on careful examination, do not all indicate Indian identity suggests that these individuals and their parents did not have any sense of Indian identity.

### **Individual Family Genealogies Contain Unproven Assumptions of Abenaki Heritage**

It is also worthwhile to examine a couple of families in more detail to assess the strength of their claims of Abenaki heritage and the clarity of their family genealogies. According to the Family Descendancy Charts Chief Leonard "Blackie" Lampman is part of the Flavien Hoague and John Morits lines. His ancestry, as extracted from the petitioner's Family Descendancy Charts, is shown below. The progenitors are shown in bold.



In order to establish Abenaki tribal ancestry, there needs to be, at a minimum, one ancestor who is a member of the historic Abenaki tribe that resided in the Missisquoi area. An examination of each line leading to Leonard Lampman undermines petitioner's claims. John Morits is listed as one progenitor, but there is no evidence that he is Abenaki. Further even if he were Abenaki, there needs to be a clear line from him to Leonard Lampman. However, the John Morits line turns cloudy with his son William Morits. There are records that suggest there were at least two men named William Morits living in northwestern Vermont at that time.

One of them was born in Highgate in 1820 and married Mary Jane Martin at age 50 on September 1, 1870 (State of Vermont, Public Records Division 1760-1870:Marriage-Groom card). His father was John Morits and his mother was Betsy Salisbury, as indicated on petitioner's charts. The federal census for Highgate appears to show this William Morits and his wife Mary Jane in 1880 with four children. In the census, his birthplace is given as Vermont. However, the age of the man shown in the census (age 45 in 1880) does not

correspond with the age of the one in the marriage record (age 50 in 1870). There is also a death record for a William Morits born in Canada, who was a basketmaker. He died in 1885 in Swanton at age 56 (State of Vermont, Public Records Division 1871-1908:Death card). The age of the man in this death record does not match either of the two previous records. These three records give three birth dates—1820, 1829, and 1835—and two places of birth—Highgate, Vt., and Canada. The petitioner's charts assume there was only one William Morits. It is not at all clear that all three of these records describe the same person.

In addition, according to the Family Descendancy Charts, William Morits and his wife Mary Jane Martin are the parents of Martha Morits, the next link in the family tree down to Chief Lampman. However, Martha was born in 1865, five years before Mary Jane and William were married (State of Vermont, Public Records Division 1871-1908:Marriage-Bride card). She seems to be a child of a previous marriage. The possibility that William Morits had been married before he wed Mary Jane Martin is strengthened by additional evidence regarding his children. Information about a prior marriage is not included in the petitioner's Family Descendancy Charts though.

The list of William Morits's children in the Family Descendancy Chart includes George, born in 1862. According to his marriage record, however, he was actually born in 1858 (State of Vermont, Public Records Division 1871-1908:Marriage-Groom card). Either way, he too was born before William and Mary Jane were married in 1870. George's marriage record lists his mother as Betsey, not Mary Jane Martin. This adds weight to the theory that William Morits had been previously married when he married Mary Jane Martin in 1870. When you consider that William was age 50 when he married her, this inference seems reasonable.

It is also possible that the William L. Moretts shown in the house next to William H. Moretts on the 1880 census is another child of William's first marriage. William L. is shown as age 26 in 1880. There is a marriage record that seems to roughly correspond with this individual, though it raises more questions. It shows this younger William Morits marrying for the second time at age 35 in 1892. The confusing thing is that while his father is listed as William, his mother is listed as Matilda—not Betsey and not Mary Jane. This again raises the question of whether there were two older William Moritses. The confusion in this second generation is increased by the fact that there is another Willie Morits, much younger than William L. Morits. Willie Morits is clearly the son of William and Mary Jane, according to his marriage record in 1901 when he wed Mary Hoag at age 21. The Family Descendancy Charts do not resolve this confusion.

The Family Descendancy Charts revise a statement made in the Petition that Leonard “Blackie” Lampman’s parents were first cousins. The petition had declared that their mothers were both daughters of William Morits (Petition:77). This account was changed in the 1995 submission where Leonard’s mother is shown as descending from the Hoagues, not the Moritses.

Examining the Flavien Hoague line next, one looks again for evidence that progenitor Flavien Hoague was Abenaki, but the records do not provide it. The marriage record of Flavien and his wife Adele Bellaire can be found on the Drouin microfilms<sup>83</sup> for St. Rosalie parish, County of Bagot, Quebec, for 1855 (Drouin Genealogical Institute 1989). This Catholic French Canadian marriage record indicates that Flavien Hogue was a day laborer,

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<sup>83</sup> These microfilms were created by the Drouin Genealogical Institute in the 1940's. The collection contains 2,366 microfilms of French Canadian vital records organized by church. They can be found at the Bibliothèque Centrale de Montréal, among other places.

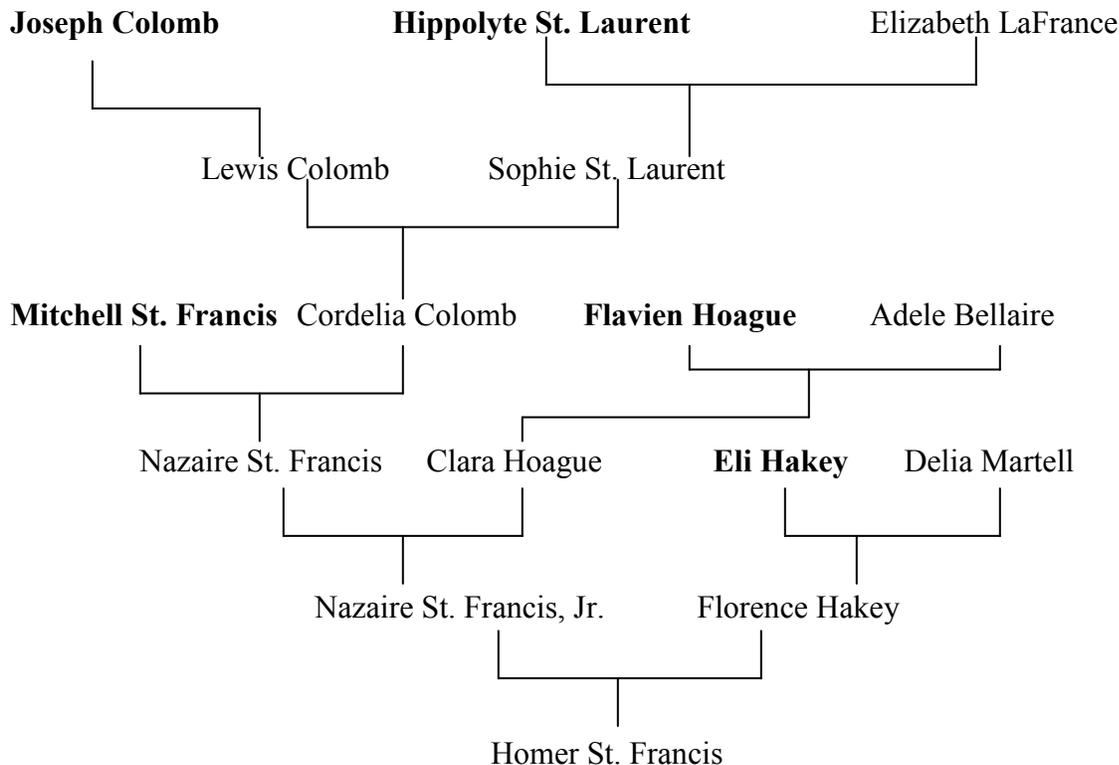
living in that parish. He was the minor son of François Hogue and Marie Plante of that parish, and married to Adèle Vétu dit [known as] Bellaire, minor daughter of Joseph Vétu dit Bellaire and of Genevieve Cadieux. The bride's father was also a day laborer of that parish. There is nothing in that record that gives any hint of Indian ancestry. The individuals all appear to be French Canadian.

In addition, this record led to the marriage record of Flavien's parents. The petitioner did not include Flavien's parents on the 1995 Family Descendancy Chart, but their marriage record exists. It can be found on the Drouin microfilms for St. Hyacinthe parish, in St. Hyacinthe County, Quebec, for 1833 (Drouin Genealogical Institute 1989). This record shows Flavien's father François Hogue was a day laborer residing in that parish. He married Marie Plante, also of that parish. The parents of François were François Hogue, a farmer, and Marie Ann Cusson. The parents of the bride were Jean Baptiste Plante and Madeleine Malboeuf. These individuals also appear to be French Canadian.

The fact that Flavien's grandfather was listed as a farmer suggests they were not transient; instead it indicates they were settled in that area. So, there were two generations of Hogues living in Quebec before Flavien's birth. Several years after Flavien married in 1855, he moved to Vermont, as the record of his children's births in Swanton in the late 1850's demonstrate. Nothing in the Flavien Hogue line gives any indication of Abenaki ancestry.

An examination of the genealogy of another well-known member of the contemporary Abenaki community is in order. The genealogy of Homer St. Francis is provided in the St. Francis family line in the Family Descendancy Charts. His genealogy, according to those charts, goes back to several of the progenitors: Mitchell St. Francis,

Flavien Hoague, Joseph Colomb, Hippolyte St. Laurent, and Eli Hakey. For ease of reference, his genealogy is extracted here, with progenitors shown in bold:



Before tracing back to the progenitors, some observations about the records related to recent generations are in order. Homer St. Francis was one of thirteen children, according to the petitioner’s Family Descendancy Charts. Although he was born in 1935, some of his eldest siblings were born between 1904 and 1920—the time period during which petitioner claimed midwife Cordelia Brow was exercising her influence to ensure that Abenaki children were indicated as Indian in birth records (Petition:74-75, 211). None of Homer’s three siblings who were born in Swanton during that time period is designated as Indian in the original records.<sup>84</sup>

<sup>84</sup> The records for Dorothy St. Francis 1914, unnamed female child 1917, and John Alfred St. Francis 1920 are included in the State’s Exhibits (Swanton, Vermont, Town Clerk 1904-1920).

In the previous generation of Nazaire St. Francis, Jr., the father of Homer St. Francis, there are also two Swanton births recorded during the first two decades of the 1900's. One is for Nazaire's younger sister Ida, born in 1908. The informant on her birth record is her father Nazaire (Sr.). Her birth record states she is White. The 1910 birth record for Nazaire Jr.'s brother Clarence (Leo) also indicates his color as White. These records are included in the State's Exhibits (Swanton, Vermont, Town Clerk 1904-1920).

One way to trace Homer's ancestry is through his mother Florence Hakey. According to the Family Descendancy Charts she was the daughter of Eli Hakey. There is no indication that Eli Hakey was part of any Abenaki community in Swanton in the nineteenth century. He was born in Massachusetts and the 1900 census records indicate that his parents were born in Canada (U.S. Bureau of the Census 1900e). His family did not move to the northwest Vermont area until about 1890.

Tracing the line from Nazaire St. Francis, Jr., to his grandfather Mitchell St. Francis one looks again in vain for evidence of Abenaki ancestry. Although it is tempting to draw the conclusion that the St. Francis surname comes from the St. Francis Abenakis of Quebec, there are absolutely no individuals with that surname in any of the historic censuses, or rolls, of Indians at Odanak/St. Francis. The petitioner's Family Descendancy Charts for this line states that Mitchell St. Francis was born in Vermont in 1841. This gives the impression that this family was always resident in northwestern Vermont. However, the 1900 Federal Census records state that Mitchell was born in Quebec in 1835, that he immigrated to the United States in 1850, and that his parents were both born in Canada (U.S. Bureau of the Census 1900e). Other evidence from Canada confirms that the St. Francis family was a late arrival to Vermont.

The Canadian marriage records for two of Mitchell's sisters are available on the Drouin microfilms (Drouin Genealogical Institute 1989). These two sisters were married in Quebec in January 1851, just around the time Mitchell apparently migrated to the U.S. The records are both from the parish of Ste. Brigide, in Iberville County. The church marriage records describe the girls as minor daughters of the late Francois St. Francis and Charlotte Lacombe of St. Gregoire.<sup>85</sup> They are not described as Indian; they are not described as transients; they are described as local residents.

Examining the line through Nazaire Jr.'s mother, Clara Hoague, leads to Flavien Hoague. As discussed in the Lampman analysis, Flavien appears to be French Canadian, not Indian. The records for Clara Hoague are somewhat confusing, since she does not appear on the 1880 census with the rest of her siblings. She also appears to be called Persis Hoague at certain times and was married previously to John Brow (State of Vermont, Public Records Division 1871-1908).

If the line to an Abenaki goes back through Nazaire St. Francis's mother, Cordelia Colomb, then we need to check for Abenaki heritage in her grandfathers Joseph Colomb and Hippolyte St. Laurent. Both these men were born in Canada. In fact, according to the Family Descendancy Charts, all of Joseph Colomb's children were also born in Quebec. Gordon Day, the expert on Canadian Abenaki, did not believe either the Colomb or St. Laurent names were Abenaki. He said they were both French (Day 8/2/1977). In sum, there is no evidence of any Abenaki heritage in the genealogical records for Homer St. Francis. Even Gordon Day commented on this lack of documentation (Day 8/1988).

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<sup>85</sup> These names match those of Mitchell St. Francis's parents as listed in the Petition and in Moody (Petition:222, Moody 1979:58, n.36).

The ambiguities in the genealogies of these individuals illustrate the uncertainties and weaknesses in the evidence. Not only is it not clear that the progenitors were Abenaki, it is not clear that the present-day members of the petitioner are descended from them.

### **Petitioner Self-Identified as White**

In addition to the doubts cast by the genealogies as to whether the petitioner is descended from a historic tribe, there are documents indicating a lack of self-identification with any tribe. These are the World War I draft registration cards for members of the Lampman and St. Francis families in which they indicated their race as white or Caucasian. There were two draft efforts during that war, and the registration form changed slightly the second time. The first form asked “Race (specify which).” The second form had boxes to check for each race, including one marked “Indian.” The following people indicated they were Caucasian or white on those forms:

Nazaire St. Francis	father of Homer St. Francis
George St. Francis	uncle of Homer St. Francis
Mitchell St. Francis	uncle of Homer St. Francis
Joseph Julian St. Francis	first cousin of father of Homer St. Francis
Herbert Lampman	father of Leonard Lampman
Walter Lampman	uncle of Leonard Lampman
Herman Denev Lampman	uncle of Leonard Lampman
Edward Hoag	grandson of Flavien Hoague, cousin of both Leonard Lampman and Homer St. Francis

(U.S. Military, Local Registration Boards). These registrant forms are especially interesting because they pre-date the eugenics movement in Vermont. Any argument that petitioner’s

ancestors sought to hide their Indian identities because they feared being targeted by the eugenics survey is misplaced here. The survey did not start until nearly a decade later.

Another snapshot of self-identification can be seen in applications for marriage licenses in Vermont between 1955 and 1968. During this time period, applicants for a marriage license filled out forms on which they included certain personal information, including their race. The applicants signed these forms under oath. The town clerks certified to the Department of Health that they had the applicants' forms on record, and then sent certified copies of the information to the state Department of Health. These copies are available on microfilm at the Division of Public Records.<sup>86</sup> After 1968, the portion of the certificates indicating the race of the applicants was excised from the microfilm copies on file at Public Records. An inspection of marriage records sampled from the 1955 to 1968 time period reveals the following people self-identified as white:

Gary Belrose married Andrea Ledoux (daughter of Hazel Vincelette who is probably #44 on LaFrance Family Descendancy Chart)<sup>87</sup>

Leo Belrose (Belrose Family Descendancy Chart #9) married Eldora Cheney and Gwendolyn Boucher

Armand Lampman (J.F. Morits Family Descendancy Chart #82, and Gardner Family Descendancy Chart #36) married Marjorie Greenia (Phillips Family Descendancy Chart #95)

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<sup>86</sup> The marriage records on file at Public Records for marriages prior to 1955 are in a different format and do not include the certification by the town clerk.

<sup>87</sup> Because the names of living people were excised from the genealogical charts provided to the State of Vermont by BAR, the State was unable to confirm exactly which individuals these two were on the Family Descendancy Charts. Undoubtedly, BAR will be able to confirm this by examining the complete genealogical charts in its files.

Francis Lampman (son of Herman Lampman, J.F. Morits Family Descendancy Chart #26)<sup>88</sup> married Edna Martin

Josephine (Gardner) Lampman (Gardner Family Descendancy Chart #29) married Raymond Harrington

Marjorie Lampman (daughter of Herman Lampman, J.F. Morits Family Descendancy Chart #26) married Armand West

Roberta Lampman (daughter of Herman Lampman, J.F. Morits Family Descendancy Chart #26) married Norman West

Virginia Lampman (J.F. Morits Family Descendancy Chart #78, Gardner Family Descendancy Chart #32) married Maurice Young

George Medor (St. Laurent Family Descendancy Chart #405) married Viola Virian  
Homer St. Francis (St. Francis Family Descendancy Chart #49) married Patsy Partlow

Pauline St. Francis (daughter of Eli St. Francis) married Robert Menard

Robert St. Francis (son of Hubert St. Francis, St. Francis Family Descendancy Chart #43) married Nancy Dudley

Ronald St. Francis (son of Hubert St. Francis, St. Francis Family Descendancy Chart #43) married Loretta Laplant

(State of Vermont, Public Records Division 1955-1968). These records indicate that a decade before the formation of the Abenaki Tribal Council, the petitioner's members did not view themselves as Indian. This raises the possibility that the sense of Indian identity was

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<sup>88</sup> Francis's father's name is shown on the marriage certificate, and was found on the Family Descendancy Charts, even though Francis's name was excised from the charts provided to the State. For that reason, the state was only able to indicate the father's identification number on the charts. A similar approach was taken for other names in this list.

not deeply rooted in these people, but rather was a new concept. It raises questions as to the continuity of Indian heritage, ancestry, and community.

### **Summary of Failure of Evidence to Satisfy Criterion (e)**

The petitioner has not submitted evidence to show that its current membership is descended from the historic Abenaki tribe that once occupied the Missisquoi region. Petitioner admits that it “has always been receptive to Indian families from anywhere in the northeastern U.S. and the border region with Canada” (Petition:158-59). This Pan-Indian attitude, along with many generations of marriages to French Canadians and other whites has resulted in family genealogies without any clear Abenaki ancestry.

### **Conclusion**

On the four criteria for federal acknowledgment examined, the evidence raises serious questions about the existence of a tribe of Abenakis in Vermont who are a continuation of the historic Abenakis who lived at Missisquoi prior to the American Revolution. The invisibility of any tribe from 1790 to 1974 was so complete that historians, anthropologists and census takers were unable to locate it. No outside observers verify its existence during that time period, thus precluding a finding on Criterion (a) for federal acknowledgment.

The absence of any indicia of a separate and distinct Indian community suggests that the petitioner’s ancestors did not live in an Indian community as required by Criterion (b). The silence of any political authority until 1974, followed by the lack of widespread acceptance once a formal organization was created, supports a negative finding on Criterion (c). Lastly the lack of proof of Abenaki heritage pervades the petitioner’s submission with respect to Criterion (e). Any one of these deficiencies would be enough to merit a finding

against federal acknowledgment. The presence of serious questions regarding the evidence on all four of them requires a finding against federal acknowledgment.

Dated, this \_\_\_\_ day of December, 2002.

STATE OF VERMONT  
WILLIAM H. SORRELL  
ATTORNEY GENERAL

By: \_\_\_\_\_  
Eve Jacobs-Carnahan  
Special Assistant Attorney General

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## Legal Authorities

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- 1979 *Mashpee Tribe v. New Seabury Corp.*, 592 F.2d 575 (1<sup>st</sup> Cir. 1979),  
*cert. denied*, 444 U.S. 866 (1979) and 464 U.S. 866 (1983)
- 1982 *United States v. Washington*, 641 F.2d 1368 (9<sup>th</sup> Cir. 1981),  
*cert. denied*, 454 U.S. 1143 (1982)
- 1997 *United Houma Nation v. Babbitt*, 1997 WL 403425 (D.D.C. 1997)
- 2000 *Miami Nation of Indians of Indiana v. Babbitt*, 112 F. Supp. 2d 742  
(N.D. Ind. 2000), *aff'd*, *Miami Nation of Indians v. U.S. Dept. of Interior*, .  
255 F.3d. 342 (7<sup>th</sup> Cir. 2001)

### Vermont Court Case

- 1992 *State v. Elliott*, 159 Vt. 102, 616 A.2d 210 (1992)

### U.S. Bureau of Indian Affairs Decisions

- 1982 Narragansett Indian Tribe of Rhode Island, Proposed Finding  
(July 1982)
- 1985a Southeastern Cherokee Confederacy, Inc., et al., Proposed Finding  
(March 1985)
- 1985b Southeastern Cherokee Confederacy, Inc., et al., Final Determination,  
50 Fed. Reg. 39047 (Sept. 26, 1985)
- 1987 Wampanoag Tribal Council of Gay Head, Inc., Final Determination  
(Feb. 1987)
- 1987 MaChris Lower Alabama Creek Indian Tribe, Inc., Proposed Finding  
(August 27, 1987)
- 1992 Miami Nation of Indians of the State of Indiana, Inc.,  
Summary Under the Criteria for Final Determination Against  
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- 1994 Mohegan Tribe of Indians of the State of Connecticut, Final Determination

- 1994 Jena Band of Choctaw, Proposed Finding, Summary Under the Criteria (Sept. 1994)
- 1994 United Houma Nation, Inc., Summary Under the Criteria and Evidence for Proposed Finding Against Federal Acknowledgment
- 1995 Huron Potawatomi, Inc., Proposed Finding, Summary Under the Criteria
- 1996 Duwamish Tribal Organization, Summary Under the Criteria for Proposed Finding Against Acknowledgment (June 1996)
- 2000 Little Shell Tribe of Chippewa Indians of Montana, Proposed Finding
- 2000 Steilacoom Tribe of Indians, Notice of Proposed Finding Against Federal Acknowledgment, 65 Fed. Reg. 5880 (Feb. 7, 2000)
- 2001 Duwamish Tribal Organization, Final Determination (Sept. 2001)
- 2001 Nipmuc Nation (#69A), Proposed Finding (Sept. 2001)
- 2001 Ohlone/Costanoan Muwekma Tribe, Proposed Finding (August 2001)
- 2001 Webster/Dudley Band of Chaubunagungamaug Nipmuc Indians (#69B), Proposed Finding (Sept. 2001)
- 2002 Chinook Indian Tribe, Notice of Reconsidered Final Determination, 67 Fed. Reg. 46204 (July 12, 2002)

United States Federal Regulations and Federal Register Notices on Same

Procedures for Establishing That an American Indian Group Exists as an Indian Tribe, 25 C.F.R. Part 83

- 1991 Procedures for Establishing That an American Indian Group Exists as an Indian Tribe; Proposed Rule, 56 Fed. Reg. 47320-47330 (Sept. 18, 1991)
- 1994 Procedures for Establishing That an American Indian Group Exists as an Indian Tribe; Final Rule, 59 Fed. Reg. 9280-9300 (Feb. 25, 1994)

## AFFIDAVIT OF JOHN ALEXANDER DICKINSON

NOW COMES John Alexander Dickinson and duly swears upon oath as follows:

1. I, John A. Dickinson, am a full Professor of History at the Université de Montréal located in Québec, Canada.

2. I obtained my Ph.D. in History from the University of Toronto in Ontario, Canada, in 1977, where I concentrated on the history of New France.

3. I have researched and written books and articles on the history of New France (Québec) in the 17th, 18th and early 19th centuries. My research has focused on the interactions between Amerindians and Europeans and the socio-economic history of the 17th and 18th centuries. As I am fluent in both French and English, I have written and published works in both languages.

4. I have taught courses at the university level on the history of pre-industrial Canada to 1850, the early history of New France (Québec), Native history, and early historiography.

5. A true and accurate copy of my curriculum vitae listing my professional experience and publications is attached as Attachment A.

6. I have reviewed pages 1 through 70 of the historical narrative of the "Petition for Federal Recognition as an American Indian Tribe submitted to the Bureau of Indian Affairs by the Abenaki Nation of Vermont dated October 1982," along with Appendices A [Robertson's Lease], B [the Case of Capt. Louis Outalmagouin], and C [Iroquois Land Claims to Vermont] to that petition.

7. Upon request of the Vermont Attorney General's Office, I reviewed those documents for general accuracy. In addition I addressed the following questions: Did Abenaki Indians leave Vermont around the time of the American Revolution, or did they go into hiding within the state? From 1791 to 1840, was

Mississquoi a political or community center for the Abenaki or was the center located in Quebec at Odanak (St. Francis)? Does the existence of religious records in Chambly, Quebec, indicate that there was a large settlement of Abenaki at Mississquoi or could it indicate that there were Abenaki in Quebec near Chambly?

8. I prepared a report containing my opinion on the issues in paragraph 7. That report is attached hereto as Attachment B.

9. I also prepared an addendum to the report, specifically addressing the relationship between the Abenaki at St. Francis and Mississquoi. That addendum is attached hereto as Attachment C.

10. Both the report and the addendum in Attachments B and C are based on my extensive knowledge of the history of New France and New England in the 17th through early 19th centuries, my professional research in those areas, and my review of the documents listed in paragraph 6 above.

\_\_\_\_\_  
John Alexander Dickinson

Serment prêté devant/Oath taken before \_\_\_\_\_  
name and position or quality

à/at \_\_\_\_\_, le/on \_\_\_\_\_ 2001.  
place date

\_\_\_\_\_  
[Attachment A]

[curriculum vita]

[Not included]

## Attachment B

Review of Historical Narrative, pages 1-70, of  
"Petition for Federal Recognition as an American Indian Tribe  
submitted to the Bureau of Indian Affairs  
by the Abenaki Nation of Vermont dated October 1982"

by John Alexander Dickinson  
Professor, University of Montréal  
Québec, Canada

The historical document drawn up on behalf of the Abenaki tribal council of Vermont, presents a reasonable reconstruction of most historical events and relies on widely held assumptions concerning social and political organization amongst hunting-gathering communities in the Northeast. Unfortunately, the Western Abenaki remain a largely unknown quantity and much of their history must be pieced together using indirect evidence which is open to interpretation. For example, Volume 1 of the *Historical Atlas of Canada*, does not indicate any Native populations in the Appalachian region from the Green Mountains to the Gaspé.

I will first go over the entire document submitted to me and comment on statements that I find incorrect or interpretations that could be challenged. Then I will answer in more detail the specific questions raised by the Vermont Attorney Generals office.

It is erroneous to state that Champlain learned of the Abenaki on his 1609 expedition to Lake Champlain (pages 2 and 24). Champlain states that the area along the Richelieu and Lake Champlain was formerly inhabited and that there were rich corn fields east of the Lake (without specifying that these fields were along the Missisquoi or elsewhere). From the native peoples that were accompanying him, Champlain understood that these lands were formerly occupied by the Iroquois but that they had been abandoned because of warfare (Biggar edition, Vol. II, pp. 90-93). The Iroquois referred to here might be Saint-Lawrence Iroquoians, who left sites along the Richelieu River and who mysteriously disappeared before 1580. It is also possible that Champlain, who was not familiar with the region or its inhabitants, misunderstood his informers (the competence of interpreters at this early stage can be called into question), and that the residents of this region were Sokokis, Pennacooks or Mahicans; nations that later merged to form the Western Abenaki.

Early town histories written in the nineteenth century are not usually the most reliable sources, but do contain oral traditions otherwise forgotten and details not found in archives. At best, however, they provide indications of a Native presence in the region in a not too distant past, but have more difficulty establishing exact dates. They are also very imprecise as to the exact identity of the peoples they deal with.

The question of whether land was held in common or by individual families (raised on page 9) is a difficult one. The opinions of Speck, once seen as a model for family

hunting territories, have been challenged by Leacock and more recently both were put into question by Feit (in G.W.Stocking ed., *Colonial Situations. Essays in the Contextualization of Ethnographic Knowledge*, Madison, 1991). It seems evident that the Abenaki frequented the Missisquoi area throughout most of the eighteenth century and developed a spiritual relation with the spirits of the lakes and rivers of the region. During the nineteenth century, they probably continued to hunt in areas not occupied by Euro-American settlers on both sides of the Canadian-United States border, as before. Property is probably not the correct concept to use here, but familiarity with the game and geography gave certain hunters a prime role in exploiting the area. Unfortunately, it seems impossible to identify exactly who these hunters who lead bands were.

The problem of estimating pre-contact native populations is extremely difficult (pages 12-14). The authors cited were all writing in a period when it was current to exaggerate the effects of epidemics and, as David Henige mentions in several articles, high count with no real documentary basis. Days estimate of 5000 is plausible. The flora and fauna of the region could probably sustain a higher population, but was the maximum carrying capacity attained or had warfare dispersed populations? It is impossible to answer these questions in any definitive manner especially given the paucity of documentary and archeological sources. The only clear evidence available concerns the eighteenth century, and it would seem that the 60 to 80 warriors mentioned in French documents regarding the village at Missisquoi relate to an Abenaki community of some 300-400 people. According to figures worked out by W.A. Starna for the neighboring Adirondacs, such a population would require an area of about 1000 to 1500 square kilometers (up to 600 square miles) for subsistence hunting (see my article in S. Courville et N. Séguin, dirs., *Espace et culture/Space and Culture*, Québec, 1995, pp. 117-125). Such a population could have continued to exploit areas of northern Vermont and New Hampshire after the advent of Euro-American settlers and after the American Revolution without entering into conflict with the latter and without disrupting their traditional way of life. The references to small groups of hunters could refer to such bands continuing to occupy the territory, but they could also refer to bands from St-François coming south to exploit traditional territories. The evidence is not clear enough to definitively state which of these two possibilities (or both of them) is actually what happened.

The paper is correct to emphasize band rather than tribal organization as the basic socio-economic and political unit. The description of a fluid group is appropriate and follows the standard interpretation of what hunting community organization was like (my only complaint would be with the introduction of a Delaware matrilineal pattern which is something of a red herring since it refers to groups farther south cultivating more corn and relying less on hunting). Unfortunately, it is impossible to say with any certainty how many bands exploited the Missisquoi watershed and what their relations with the bands at St-François were.

Mission communities in the St. Lawrence valley had become somewhat acculturated by the eighteenth century with populations adopting some elements of European apparel and some other elements of material culture. The most important link to Europeans, however, seems to be the Roman Catholic Religion although there is considerable debate amongst scholars as to the degree to which Catholicism had been internalized. The different communities did have a clear identity within the French domain, however, and French documents refer specifically to the Abenaki whereas British documents after the Conquest of New France often subsume all mission Indians under the term Seven Nations of Canada. This alliance was certainly present as of the American Revolution and oral tradition would have it beginning in the seventeenth century (see Jean-Pierre Sawaya, *Les Sept Feux du Canada*, Sillery, 1998). This political organization existed and was at a level superior to the hunting band throughout the period 1760-1840. The Missisquoi Abenaki would have been considered part of this larger unit prior to 1783. The recognition by Britain of an independent United States, however, would have put them outside the geographical limits of Quebec and, in British opinion, out of the alliance although the exact boundary line was not clearly known in the area for several years. The Missisquoi Abenaki would probably still have considered themselves part of the Saint-Francis mission political unit.

The establishment of Kahnawake in 1668 had nothing to do with a desire to link the Iroquois and the Abenaki. From an Iroquois perspective, it was established to exploit traditional fisheries in the region and to enable some converts to have access to missionaries. From a French perspective, it drew christianized Iroquois and captives and thereby enfeebling the Five Nations confederacy as well as establishing a protective shield to the south of French settlements. The alliance between Kahnawake Mohawk and Abenaki was a later development and these groups only really acted in unison at the end of the French and Indian War. D. Peter MacLeod (*The Canadian Iroquois and the Seven Years War*, Toronto, 1996) considers that the Abenaki were already involved in warfare since 1750 to defend their traditional hunting grounds in Vermont and were more willing partners than the Iroquois. After the war and during the American Revolution the Canadian League became firmer with the Kahnawakes playing a leading role and often speaking for the other members in formal meetings with government authorities. It is often difficult to distinguish which is the voice of the Mohawks and which is the voice of the confederacy.

There seems to be a contradiction in stating that the hunting grounds of this extraordinarily rich area would have been depleted in 1700 (page 26) and then claim that many Abenaki were living there. It is true that the area to the east of Lake Champlain was little known and it is reasonable to assume that the Abenaki established at St-François would exploit the area south of them as a hunting territory. However, at this time both French and British had mapped the area and claimed it as their territory. The French claim rested mainly on allied Indians occupying and exploiting the region and this justified the concession of seigneurial grants down the Richelieu and around the north of Lake Champlain in the early

eighteenth century. It was certainly at this time that a group of Abenakis from St-Francis established a village at Missisquoi. Whether they were returning to lands they had previously occupied or not cannot be proved, but their occupation of the area in the last half century of French domination in Canada is certain. Refugees from Shaghticoke might have joined the original groups or may have been some of the original inhabitants. Again, this cannot be demonstrated one way or another.

The question of political authority is difficult. Europeans had difficulty recognizing Native systems of social control and what they have to say, if taken too literally, can be misleading. French officers, especially during the wars at the end of the French period, were often critical of Natives and considered them undisciplined. This stemmed from misunderstanding of Native goals and the need to proceed through consensus rather than by command. Europeans took note of war leaders who were helpful to them but not of other leaders who probably had as great if not greater influence in the community. At times, the French tried to impose chiefs they thought would do their bidding, but this was generally refused by the Natives, although the French continued to treat "their chief" as the principal spokesman for the nation. Grey Lock was recognized as a major war chief, but this would not necessarily have made Missisquoi a "center" (p. 30) since the French amalgamated his actions with those of the Abenakis in general.

The Dutch were not a threat during the French and Indian War (p. 31)

The population counts on page 32 are speculative. There was a lot of population movement, but it is unlikely that the Abenaki of St. François and Missisquoi would have grown to more than 1300-1500 in the period. The Missisquoi population for the 1750s seems very optimistic since the village was on the front line and the growth of Odanak is probably attributable to families moving back there from Missisquoi. The number of hunting bands in the interior would have had been based at a permanent settlement (probably St-François). Likewise, Bougainville's report concerns warriors that were with the army and they came from St-François as well as from Missisquoi. I believe that it would be wrong to assume that the 100 to 150 men were all from Missisquoi.

I am wary of Bougainville's statement that Abenaki youth had less respect for their elders than other Indian nations (p. 34). Native government was not coercive and chiefs had little authority (as Europeans understood the term) over their followers. It is strange that a document written to reflect Native views would uncritically accept such claims by European observers who had little knowledge of Indians especially at a time when French officers' views were becoming more racist (Saliha Belmessous thesis at École des Hautes Études, 2000). The Abenaki continued to be represented by the Seven Nations of Canada in the years after the 1760 so there is evidence of a political grouping above the family hunting band.

We know too little of the movements of Native populations to state that "Indians from all over New England were on the move" (p. 36) in the period right after the

surrender of New France. Most were pragmatists and would have realized that they would have to deal with British authorities in the future.

Perry's suppositions are merely that and there is no proof that there were more Abenaki at Missisquoi than elsewhere (p. 37). Lower Canada did not yet exist when Murray was governor, but this passage indicates the uncertainty over the boundary. There is no proof that the Charlotte mentioned a little lower was the daughter of Grey Lock. Charlotte is such a common Christian name that nothing certain can be deduced from this.

The lease in Appendix A and mentioned on page 38 certainly is clear evidence that the Abenaki considered the land around Missisquoi as their land. The collective signing can be interpreted as evidence of a higher political organization than that of the hunting band. At this time it was still rare for Natives to consider property as being held individually but rather as a collective gift from the Creator. The signatories would seem to be the elders responsible for community organization.

The relations between Kahnawake and the other members of the Seven Nations of Canada are not always clear. Kahnawake often spoke for the "confederacy", but it would seem normal for the Mohawk to look out for their interests first. Any claims they made, could be claims for the entity. Lake Champlain was a frontier between Mohawk and Abenaki hunting territories since the 17th century and both nations could stake legitimate claims. The Abenaki would, however, have a stronger claim to the eastern shore. This comes up again on page 52 and the petition on page 313 was clearly signed by 20 chiefs of the Seven Nations which included the Abenaki.

I do not see that the reference to the problems of the Abenaki at St. Regis (p. 41) is an indication that Missisquoi was considered their territory. The Abenaki at St. Regis had no chiefs recognized by the British, but this does not mean that they had no chiefs (p. 42). The Abenaki did not get along well with the Iroquois at St. Regis and most found their way back to St. François.

The Abenaki population in Vermont at the beginning of the Revolution is impossible to determine (pp. 43-44). The "evidence" presented is largely hypothetical and I would hesitate attributing more than 500 Abenaki to the area at this time. It is impossible to determine whether they considered themselves part of the St. François Abenaki or an independent group.

The question of Native baptisms is a difficult one. Natives were nominally Catholic, but it is unsure how complete their conversions were especially in periods of turmoil when priests were not available. Often, Natives brought several children, some adolescents, to be baptized at the same time (the Tadoussac register contains many examples of this type). The ritual would not seem, therefore to be of prime importance to them. Were the Abenaki equally nonchalant about such matters? The period during the war and after the Conquest was a difficult one for the Quebec Church : it was not legally recognized and lacked priests. Natives were not a priority

for the hierarchy and I do not believe that there was a Catholic community in the future United States that was accessible. Abenakis can be found in several parish registers. The register for Pointe Olivier (St. Mathias de Chambly) mentions two Missisquoi Abenaki baptisms in June 1755 and April 1759. The Chambly register has two Missisquoi baptisms : René Portneuf in April 1760 and Marie-Madeleine in 1763. But it also contains two baptisms of St. François Abenaki in December 1756 and June 1764. (The published registers stop in 1765 so I cannot know if there were any at a later date.) The two other parishes in the vicinity with registers before 1765 were St. Philippe and St. Constant but they have no Native baptisms. Only one other parish was opened before 1799, Blairfindie, that might contain Abenaki acts. All the other parishes closer to the U.S. Canada border were opened in the period 1823-1843. What can be deduced from this scant data? Abenakis were not having many children baptized outside the mission communities. Chambly was a stopping point for Abenakis moving north from Missisquoi to St. François and for residents of St. François going south to hunt.

I do not share the interpretation of the citation on page 54. I believe that the citation says that Madame Campeau wore a green ribbon on her hat when she expected a visit from the white person who occupied the land she claimed to settle her case. The words "possessor of her assumed heritage" indicates that she awaited the person occupied an inheritance that she assumed was hers.

I believe that the question of where the Indians were from is important (page 55). The final citation clearly refers to Mohawks who also had claim to the Lake Champlain area. Traveling and hunting expeditions were part of both Abenaki and Mohawk lifestyles and this does not seem to demonstrate much except that Natives were still hunting in the area.

The Bouchette citation on page 69 says little about the Abenaki at Odanak. Bouchette, as other European-Americans, had a great disdain for Native practice and was looking for signs of agricultural improvement on the British model. I believe that the Abenaki were continuing to exploit hunting territories along the upper St. Francis and into Vermont and New Hampshire, but these were Odanak Abenakis. Their relations with Abenakis living on a continual basis south of the 45th parallel are not clear.

The genealogical data, based largely on oral histories, is difficult to demonstrate, but I believe that most of it going back 200 years or so is probably quite accurate. Beyond two centuries, there is a lot of conjecture. Family names were not well fixed and since most Natives continued to speak their own languages into the 19th century, not very reliable. First or Christian names were not varied at the time and offer little precise information on family trees.

A major question that is not really resolved in the document is the relationship between the Missisquoi Abenaki and the residents of St. François. To my mind, the Missisquoi were a branch of the larger community at St. François throughout the

French régime and there was certainly considerable movement back and forth between these communities. Did the Missisquoi band ever have a distinct identity and political organization? During the French period, the Abenaki themselves would not even have considered this a valid question. It was only after the American Revolution divided hunting territories to the south and to the north under two distinct Euro-American authorities that this problem might have been raised. Given the uncertainty as to where the boundary was during the early years and the paucity of white settlement, especially in the mountainous areas used for hunting, the bands exploiting the region probably did not think it necessary to deal with this question. Only in the nineteenth century, as white settlement progressively took away their hunting lands would a new form of accommodation be required. Genealogies indicating their settlement in white communities and work as day laborers would answer this, but I cannot give a definite opinion with the material at hand.

## Attachment C

### Addendum to Review of Abenaki Historical Narrative

by John Alexander Dickinson  
Professor, University of Montréal  
Québec, Canada

The question of the relationship between St Francis and Missisquoi continues to bother me. I do have a plausible hypothesis but cannot back it up with clear documentation and I am not sure it is really helpful. There are perhaps some clear references in the official correspondence of Beauharnois or Hocquart but I do not have the time to read several hundred manuscript pages.

When the Abenaki established a village at Missisquoi, it was in the context of French government efforts to limit the effect of the disastrous Treaty of Utrecht (1713) in which France relinquished vast territories (notably "Acadia") and recognized British sovereignty over the Iroquois. The French were also trying to develop a naval shipbuilding program and the best oak stands were in the Lake Champlain Richelieu River region as the construction of a sawmill at Missisquoi attests. Hocquart was also actively granting seigneuries in this area from 1733 on. Although he stated in a letter to the minister that the Lake Champlain region was more advantageous than the upper St Lawrence because of its climate (Munro, *Seigniorial Tenure*, pp. 180, 183), I believe that strategic considerations were more important. Also native peoples were often seen as the line of first defence to protect agricultural establishments. This was the rationale behind the concession of the Lac des Deux-Montagnes to the Sulpicians in 1717 so that they could relocate the Iroquois then living on Montreal Island.

From these considerations, I infer that French authorities encouraged the St Francis Abenaki to consolidate the hunting camp at Missisquoi and make it a true village hoping thereby to better protect French settlers. With expansion up the Richelieu, a complete displacement of St Francis south might have been considered by the authorities. Some Abenaki were favorable and did move to Missisquoi, but the majority remained in St Francis they were after all independent allies and not subservient subjects. Ties between the Abenaki at St Francis and Missisquoi remained strong and they almost certainly considered themselves part of a united Abenaki nation with much movement back and forth for hunting, social interaction and trade. Since Missisquoi was uncomfortably close to British military forces after 1750, St Francis was the logical refuge and indeed I remarked in my article on population that numbers in the mission communities increased in times of conflict and then went down again with peace as refugees returned to their lands. After the fall of New France, the military threat disappeared for a decade but the Revolution and white penetration into the area for settlement threatened to disrupt the old relation. Hunting territories in the uplands could be maintained and sustain a

population. It is unlikely, however, that a complete break with the parent community would have occurred since family ties, the need to find mates, and religious convictions would draw the Vermont Abenaki north. Only in the nineteenth century as the Abenaki were forced to abandon a traditional hunting lifestyle and find employment in Vermont communities would they become truly distinct from the St Francis Abenaki.

To summarize: Abenaki movement to Missisquoi clearly fit in with French imperial policy but only in as much as Missisquoi was still a subdivision of the St Francis Abenaki. Until the American Revolution, nothing disrupted the unity between two villages sharing common family ties and political goals. "Authority" was centred in St Francis as the parent community. The creation of a border between the two communities obliged the Abenaki living to the south to become more independent but without breaking the social links to the parent community for many years.

## AFFIDAVIT OF J. KAY DAVIS

NOW COMES J. Kay Davis and duly swears upon oath as follows:

1. I, J. Kay Davis, am a genealogist and consultant specializing in issues relating to tribal acknowledgment.
2. I am currently the historian of the Bois Forte Band of Minnesota Chippewa. I am a member of that tribe.
3. From 1993 to 1996 I held the position of Assistant Genealogical Researcher at the Bureau of Indian Affairs, Branch of Acknowledgment and Research, in Washington, D.C.
4. I obtained my B.A. in Native American Studies from George Mason University in Fairfax, Virginia, in 1995. I served as a workshop presenter in genealogy at the Idaho Historical Society in 1993 and 1994. I was the project designer for an exhibit about Native American New England Immigration to Idaho at the Idaho Historical Society in 1992.
5. I have served as a consultant to the Vermont Attorney General's Office on genealogical issues relating to the criteria for federal tribal acknowledgment. Throughout the period of consultation, I provided guidance to the Attorney General's Office on sources of genealogical, census, and community data.
6. I reviewed the following documents provided to me by the Vermont Attorney General's Office: (a) Petition for Federal Recognition as an American Indian Tribe submitted to the Bureau of Indian Affairs by the Abenaki Nation of Vermont dated October 1982, (b) Addendum to the Petition for Federal Recognition as an American Indian Tribe submitted to the Bureau of Indian Affairs by the Abenaki Nation, January 10, 1986, along with Appendices (c) Second Addendum to the Petition for Federal Recognition as a Native-American Tribe, Genealogy of the Abenaki Nation of Missisquoi, submitted to the Bureau of Indian Affairs, December 11, 1995, including the

Family Descendancy Charts. The copies of the documents I reviewed had been redacted by the Bureau of Indian Affairs to remove names of living people. However, I was able to review unredacted copies of the redacted pages of the 1982 petition, as the original petition is on file in a publicly accessible library in Vermont.

7. Upon request of the Attorney General's Office, I also prepared a report containing my comments on certain aspects of the Abenaki petition based on my examination of genealogical records. That report is attached hereto as Attachment A.

8. The report is based on my knowledge of Proposed Findings and Final Determinations issued by the Bureau of Indian Affairs in federal acknowledgment cases, my experience in conducting genealogical research related to Indians, my review of the petition documents, and my review of genealogical and historical material collected by me or under my direction. The types of genealogical and historical material I examined included, but were not limited to, vital records, church records from the U.S. and Canada, cemetery records, federal census records, military records, historical lists of Abenakis in Canada, records of the Carlisle Indian school, and Gordon Day's "Identity of the St. Francis Indians."

The foregoing statements are based on my personal knowledge and are true to the best of my knowledge and belief.

Signed this \_\_\_ day of \_\_\_\_\_, 2002

\_\_\_\_\_  
J. Kay Davis

STATE OF MICHIGAN  
COUNTY OF \_\_\_\_\_, SS.

Subscribed and swore to before me, this \_\_\_ day of October, 2002.

\_\_\_\_\_  
Notary Public

## ATTACHMENT A

### COMMENTS ON PETITION OF THE ST. FRANCIS/SOKOKI BAND OF ABENAKIS OF VERMONT BASED ON EXAMINATION OF GENEALOGICAL RECORDS

#### **Federal Census Records and Community**

One of the criteria that petitioners must meet for federal acknowledgment focuses on community. The federal regulations, 25 C.F.R. 83.7 (b), require that

A predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times to the present.

This is a very difficult criterion to examine for the petitioner, because there appears to be no historical times from which to begin. However, assuming the historical times are the late 1700's, the only time there appears to be a community of Abenaki Indians in Vermont is prior to 1765, when Robertson's lease was signed. Instead of tracing the descendants of members of that community down to the present, the petition attempts to show a community by listing all of the people who may have surnames similar to today's members. The petition lists both people who have married in to the group, who are non-Indian, as well as those who may have Indian ancestry. This confuses the issue. In various forms of the petition submitted at different times, census records are used to show the appearance of persons from whom the modern-day community *may* descend.

In examining the federal censuses for all available years, and especially the 19th century, I find the ancestry of today's petitioner looking much like the rest of the communities that were predominantly French Canadian. Many had the same occupations, such as farm laborer, day laborer; many could not read or write English.

Their uniqueness from the other communities appears to be that they or their parents were born in Canada. They did not identify in the records as Indians, and were living intermixed with other French-Canadians, and many others.

Although the petition attempts to give reasons for this phenomenon, the fact is there were other persons listed in Vermont as Indian when these censuses were taken. For instance, in 1880, in Grand Isle, Grand Isle, Vermont, William and Mary Bomsawin [sic] were listed as Indians. They are not ancestors of the modern-day community members. The ancestors of the modern-day community were consistently listed as white on Federal Census records.

The petition stresses that the ancestors of the modern-day community lived in the Back Bay section of Swanton. From the 1870 census records, I was able to determine that these people were scattered through Back Bay and Swanton. They were often as many as 5 or 15 houses away from each other. This entire area was populated by French Canadians. It was not a neighborhood uniquely populated by the petitioner's ancestors.

The several Federal censuses for communities in the 19th century show that the families are not only scattered about, but they do not appear to be interacting with one another. They were not distinct from their non-Indian neighbors. Few, if any, were identified as basket maker, broom maker, hunter, fisherman, etc., as found in other Indian tribes. Rather, their occupations were given as day laborers, masons, farmers or farm laborers. In the 1870 Federal Census, there were scant listings of anyone as basket maker. One found was that of Mary Francis, 23, who was living with Elizabeth Francis, 44, both born in Maine; Mary was listed as a basket maker. Another woman in the same household,

Eunice Francis, age 77, was also listed as a basket maker. She was born in Canada. (In the same household was a child, Lewis Francis, age 3, born in Vermont and Frank Ross, 22, basket maker, born in Canada.) None of these persons is claimed to be an ancestor of the modern-day petitioner.

In addition, the petitioner worked hard to present what may look like interacting communities of people, listing the numbers and surnames shown on many censuses. These appear in the many appendices submitted with the Addendum to the Petition in 1986. Researching many of those names in vital records, I discovered that the majority of the people listed were not ancestors of the present-day petitioner, nor even of documented Indian descent.

In recent findings, the BIA has said,

*In this case, the DTO's [Duwamish Tribal Organization's] interpretation of historical events pertaining to its ancestors is not accurate or complete, even when the circumstances of contact are taken into consideration. For example, [petitioner's expert] does not give specific descriptions of each of the petitioner's isolated family enclaves which the writer says were widely distributed in the Puget Sound region. The PF [Proposed Finding] found that many Duwamish maintained contact with one another or those who moved to reservations, despite the impact of Euro-American settlement. However, these Duwamish were **not** the petitioner's ancestors. The petitioner's ancestors were not in contact with the Duwamish tribe.*

(Final Determination for the Duwamish Tribal Organization, p. 18)

*[T]he primary problem is that the petitioner is a group that was formed in recent times, specifically during the last two decades of the 20th century.*

### **Descent From a Historic Tribe**

One of the tribal acknowledgment criteria applied by the Bureau of Indian Affairs is 25 C.F.R. 83.7(e)(1), which says

The petitioner's membership [must] consist[ ] of individuals who descend from a historical Indian tribe or from historical Indian tribes which combined and functioned as a single autonomous political entity.

The problematic wording of criterion 83.7(e)(1), "who descend from a historical Indian tribe," may imply that any historical Indian Tribe will do. However, the last portion of the criterion, "which combined and functioned as a single autonomous political entity," clearly shows that the tribe must have functioned as a political entity. This means the group must have behaved as a political entity throughout time, since first contact. Though the petitioner may be able to show that its members descend from people considered Indians, the political entity was non-existent. If there was a historical tribe of Abenaki, it was in Canada by the time of the formation of the United States.

The tribal acknowledgment process requires an examination of just who the present-day members of the petitioner are. Though the petitioner has submitted many community surveys, census surveys, etc., those materials include many persons who are not listed as ancestors on the Family Descendancy Charts submitted in 1995. Perhaps the petitioner was attempting to make a more all-inclusive list of Indians, but what they compiled was a more all-inclusive list of French Canadians and their non-

Indian spouses' families. This method of attempting to produce a base roll of ancestry is flawed at best. The most effective way to identify ancestry is to look at the 18th-century lists that did identify Abenaki in or near Vermont, attempt to find those individuals on the earliest census records of Franklin and Grand Isle counties, and follow them through the more recent census returns. In attempting to research in this manner, tracing such individuals did not lead to the petitioner's members.

In an effort to identify individuals and spouses who may be Indian, I have searched through church, vital and war records. Many of the church records were located in Canada, and are written in French. Other names submitted on the petitioner's Petition Addendum Appendices were searched in the Vermont vital records and federal census records. These were examined and most of the individuals were found to be non-Indian. None was listed as Indian. Rather, many of them were born in Canada and listed as white in the vital records. No trend of immigration was noted.

From all of the records, it appears that descent from an Abenaki *tribal entity* is not only non-existent, but impossible to document. That some families may have Indian ancestry is not in question; it is the tribal ancestry that is lacking.

In the 1900 and 1910 federal censuses, when self-identification was recommended to census enumerators, giving special attention to Indians and Indian tribes, the compilation of the total number of Indians for the entire State of Vermont listed 5 Indians in 1900, and 26 in 1910. In Franklin County, in 1900, not a single Indian was listed. In 1910, 5 were listed, but they were from one of the New York tribes and none of them were the ancestors of the modern community of Abenaki. These Franklin county census records are significant,

because Franklin County was the residence of the majority of the ancestors of the modern community. The census of 1920 showed no Indians in residence in Franklin County as well. (U.S. Bureau of the Census, *Fourteenth Census of the United States taken in the Year 1920*, vol. III, *Population*, (1922), p. 1049 (listing figures for 1900, 1910, and 1920)).

Some familial connections were extracted from information of burials in the St. Mary's Catholic Cemetery in Swanton. Ledoux, Tom, and family, "St. Mary's Catholic Cemetery, Swanton, Vt.," Swanton Historical Society, August 1993. There does not appear to be a distinct burial pattern, but the information about the persons buried was helpful to identify maiden names and familial connections. The graves of the ancestry of the petitioner appear to be scattered throughout the cemetery, and no specific "Indian Burials" were noted. Just as with the census information regarding residence and occupation patterns, nothing in the burial records suggested that the petitioner's ancestors were any different from the rest of the French Canadians in Swanton.

### **Did the Eugenics Survey Identify the Petitioner's Indianness?**

The Eugenics Survey of Vermont in the 20th-century included some of the ancestry of today's petitioner. It has been given a great deal of weight in the public statements of the petitioner as a reason for lack of evidence necessary for federal acknowledgment as an Indian tribe. Because the Eugenics Survey has been misinterpreted and misused by the petitioner, I comment on it here.

The Eugenics Survey (hereafter called the Survey) in Vermont was one of many eugenic programs of the 1920's and 1930's in the United States, especially on the East Coast. Established in 1925 in Vermont, the Survey was organized and directed by Henry F. Perkins, Chairman of the University of Vermont Zoology

Department. In 1927 the Survey was expanded to address all factors affecting rural life. It became part of the Vermont Commission on Country Life. The Survey ended its activities in 1936. (Gallagher, Nancy, summary of Eugenics Survey of Vermont, Vermont Public Records website: [www.bgs.state.vt.us/gsc/pubrec/referen/eugenics.htm](http://www.bgs.state.vt.us/gsc/pubrec/referen/eugenics.htm)).

According to a paper read by Perkins and reprinted in The American Eugenics Society, Inc.'s publication *Eugenics* in 1930, the aim of the Survey was "to secure usable data upon the hereditary aspects of what we have called the Human Factor." He went on to describe the ethnicity of Vermont, stating that "[t]he largest single foreign element is French-Canadian." (Perkins, Henry F., "Hereditary Factors in Rural Communities," *Eugenics*, vol. III, no. 8, August 1930. Offprint in Vermont Historical Society pamphlet collection, Montpelier, Vt ). He explained that some fifty-four families were worked up, some including 5 to 7 generations per family. I examined those family charts and quote from some of them in this paper.

While it is true that the Survey included some of the ancestry of today's petitioner, I do not find that the survey was directed toward Indians. I have researched the Survey in depth, and found that the ancestry of the petitioner was *not* targeted as Indian, but perhaps as French Canadian. Some of these French Canadians mentioned their Indian ancestry, but that was not the focus of the Survey.

In looking at communities from which to study the inhabitants, the eugenics program looked at the community of Grand Isle and reported that:

*[There are] Two distinct classes. Quite old settlers (Democrats) and the French who have come in from Canada (Catholics). The French Canadians*

*farm and are gradually buying farms of their own. They do not mix with the others. The former class of people are well read and intelligent. They are said to buy more magazines than most other towns. They are not all college graduates but seem to be quite well educated. They do not allow the French-Canadians to mix with them, although of course, the children of both classes go to school together. The French-Canadians take an active part in politics and have social organizations of their own. They have been in Grand Isle a long time. French Village is part of the town, where some French-Canadians have settled. Few Catholics go to high school and they are not as educated as the other class. One of the Catholic organizations is the Woodmen's Club.*

(Eugenics Survey Papers, "Towns Suggested for Study, Grand Isle," p. 1)

Though some of the persons in Grand Isle that were French-Canadian may have had Indian ancestry, it is clear that they were not targeted as Indians, nor identified as Abenaki.

*She says that Old Antione had Indian blood and had something to do with the Kickapoo. (Agent H.E.A. thinks that the above statement is probably rather doubtful except for the fact that Old Antione did have Indian blood and probably was related to some of the inhabitants of an Indian reservation in southeastern Canada.)*

(Eugenics Survey Papers, "Phillips General History")

*She came from an Indian Reservation Caughnewaga, sixteen miles from Montreal.*

(Eugenics Survey Papers, "Phillips General History, Delia Bone, Generation II")

Interestingly, one of the writers on the Survey team used the term of "tribe" when discussing the above-mentioned families, but she used the term in the context of a family.

*Peter Phillips and all his tribe were constantly traveling. They traveled all over northern and eastern Vermont, the Vermont border of New York State, the Vermont border of New Hampshire, and went as far as Belfast, Maine.*

*For a great many years and probably until his first wife Delia Bone died, the headquarters of the tribe was South Burlington. Peter's children call that part of the country "The Plains." Here the tribe camped down in winter and devoted themselves to making baskets and collecting horses. In early spring as soon as they could travel they started out selling baskets. When their baskets were sold they started to trade horses.*

*After Delia died, on one of their trips they camped for a while in Danville and Peacham. While there they found "Old Jake" Way and his daughter living in Paradise Alley in Peacham, near West Danville. The Phillipses joined forces with the Ways in Paradise Alley and made their rendez-vous [sic] for some time, when they were in the eastern part of Vermont.*

(Eugenics Survey Papers, "Phillips General History, Generation II, Delia Bone")

Though the term, "tribe" was used in that passage, nowhere in the entire papers of the Survey were the people ever identified as belonging to an Abenaki Tribe. Indeed the term "Abenaki" was never used, only "Indian," and that very sparingly.

Years later, *after* some of the claimed Abenaki descendants began their campaign for recognition as Indians, writers began writing about the Eugenics movement as including those of Abenaki descent. This story caught the attention of the media and received a great deal of coverage.

In 1991, Kevin Dann wrote that the Survey's purpose was "to gather information, as full and accurate as possible, that can be used for the social betterment in Vermont." (Dann, Kevin, "From Degeneration to Regeneration: The Eugenics Survey of Vermont, 1925-1936," 59 Vermont History 5, 8 (1991)). In the gathering,

*[no] people represented a mobile, uncontrolled social group in Vermont better than the first two subjects of the Eugenics Survey investigations - the "gypsy" and "pirate" families. Principally of Abenaki and French-Canadian*

*ancestry, the “gypsies” moved freely about a wide part of the state, almost entirely outside mainstream economy and society.”*

(Dann, p. 14)

I found no evidence that these families were Abenaki. He added,

*That the program of the Eugenics Survey was still largely a racist hereditarian endeavor was betrayed by the first section of the Third Annual Report, which was a list of English corruptions of French names. Such corruptions, especially those whose spelling changed through successive generations, “might throw one off the track for a long time.” Seemingly an allusion to the difficulty that the Eugenics Survey fieldworkers had with French names in their genealogical detective work, the publication of the list, accompanied by the statements that the Eugenics Survey had a cross index of ninety such names, was clearly intended to alert readers to the ethnic background of third and fourth generation Vermonters of French-Canadian descent whose ethnicity might not be apparent by their surnames. Indeed one of the names in the list was that of the family upon whom the Rector narrative was based. A strong current of anti-French-Canadian bigotry runs through the work of the Eugenics Survey.*

(Dann, p. 15)

The Eugenics Survey of Vermont was disbanded in 1936, yet it smoldered on during WWII when a paper on mental deficiency was written. Statistics had been released following WWI that showed,

*Vermont ... had the highest number of rejections except Rhode Island of any state in the Union for nervous and mental diseases, mental deficiency, epilepsy, psychoses, neuroses ... When returns from the induction centers in the present war gave us no better reports we became a bit panicky.*

(Ainsworth, Lillian M., “Vermont Studies in Mental Disorders,” [1944], typescript, Vermont Historical Society, MS/613.94/Ai66.)

The author continues by praising the Survey and the 1941 law setting up a Board for Control of Mentally Defective Persons. Again, identification, registration, segregation, education and supervision of mentally defective persons were codified in law. If the same families were targeted as were in the Survey, no wonder the families felt more anxiety than did those of other Vermonters. Clearly, French-Canadians were targeted; some of the ancestors of the petitioner were French-Canadians. Thus, family tradition may have blamed the Survey for causing Indians to hide their identity as well, regardless of whether they had any Indian identity to hide.

As time passed, the role of the Eugenics Survey took on more significance in writings about the Abenaki. Since the “emergence” of the Abenaki in the early 1970’s, there were marked changes in the literature. In a history kit published by the Vermont Historical Society in 1998, an explanation was given for the absence of Abenaki history.

*History books have long claimed that the Abenaki “disappeared” from Vermont. While some Abenaki did leave Vermont for Canada, many others remained. As the Abenaki began to speak French or English and adopted European dress, historians of the nineteenth century assumed that the Abenaki had vanished. The Abenaki families who remained in Vermont survived in a variety of ways. Some lived a nomadic life and were called “gypsies.” Others remained on the outskirts of their communities and lived off the land as they had for centuries- hunting, fishing, and trapping.*

*From the 1920’s through the 1940’s the Eugenics Survey of Vermont ... sought to “improve” Vermont by seeking out “genetically inferior peoples” such as Indians, illiterates, thieves, the insane, paupers, alcoholics, those with harelips, etc. ... As a result of this program, Abenaki had to hide their*

*heritage even more. They were forced to deny their culture to their children and grandchildren ...*

(“Abenaki in Vermont,” A History Kit for Students and their Teachers, p. 31)

It is interesting that the kit made up to teach Vermont’s children about the Abenaki does not mention that for at least 100 years prior to the 1920’s, the purported Abenaki in Vermont did not identify as Indian on any public documents. They do not self-identify as Indian in census records or military records. It is incorrect to blame the Eugenics Survey for the denial of their culture to the public, and certainly incorrect to blame it for the denial of their identity to their children and grandchildren. The Eugenics Survey of the 1920’s has been used as a tool to try to explain why the Abenaki have no presence in the 200 years of history from the time of the American Revolution to the time of the Abenaki “emergence” in 1972.

As time went on, the flame of the Eugenics Survey ignited. In 1999, Nancy L. Gallagher wrote a book about the Survey. When writing about it she said,

*The “Gypsy family” of Vermont was one of the first and most extensively studied kinship networks in the survey. Harriett Abbott’s genealogical work had traced the family line back five generations to an ancestor from Quebec of “mixed ancestry with apparently very strong doses of Indian and Negro.” His descendants, Perkins claimed, retained “their ancestor’s roving or Gypsy tendency. ... What is startling about the Gypsy family is that, over a period of four months, Abbott had been able to triple the number of descendants and relatives of these families, bring their numbers to 436. ... They bore a resemblance to the “inferior class” of French Canadians that Rowland E. Robinson claimed had “infested the state” and then mysteriously disappeared, but they also seemed a lot like the Native American nomadic families that nineteenth-century Vermonters had also called Gypsies. ... The descendants of the French Canadians who settled in Vermont, after moving back and forth across the border for seasonal work, represented, in Robinson’s analysis, an “insidious and continuous invasion” of remnants of a defeated enemy.*

(Gallagher, Nancy, *Breeding Better Vermonters: The Eugenics Project in the Green Mountain State* (1999), p.81)

Frederick M. Wiseman, in *The Voice of the Dawn: An Autohistory of the Abenaki Nation*, written in 2001, spoke of the Vermont Eugenics Survey, as follows:

*Soon the lens of genocide was trained on the Gypsies, Pirates, and River Rats, as well as other ethnic groups. Employing the latest genealogical research and statistical record keeping techniques, the survey added new technologies to the list of ancient genocidal procedures used by New English authorities against the Abenakis. In addition, they provided social and police organizations with lists of families to “watch.” Unfortunately, the social gulf between elite Anglo culture and the village dwelling River Rats and Pirates was not so wide that they could entirely escape notice. Major Abenaki families at Missisquoi were especially at risk. The more “hidden” families and the Gypsies partially escaped unheeded - for a while. But then began ethnic conflict incidents as Gypsies and Pirates had their children taken from them. The theft of children and the hatred emanating from the burning cross and Ku Klux Klan rallies are still recalled by Abenaki and French Canadian elders in Barre, Vermont. Any family who still had thoughts about standing forth as Abenaki, due to the tourists’ continued interest in our arts and culture quickly retired to obscurity as the tide of intolerance rose. We continually needed to be on our guard with the police, the tax man, and the school board, the eyes and ears of the survey.*

(Wiseman, pp. 147-148)

Mr. Wiseman became a member of the Abenaki Nation of Missisquoi in 1987, and later became a citizen of the St. Francis - Sokoki band. (Wiseman, p.231)

In the papers of the Survey, clearly the Indians were NOT targeted, but French-Canadians were. The survey may have included some persons with Indian descent, and especially two families that intertwine with others of Indian descent. However, there is no documentation that these people were Abenaki. So how did the Abenaki use the Eugenics Survey to their benefit?

- 1) By using such a disagreeable subject as ethnic cleansing to excuse their lack of documentation as a tribe.
- 2) By eliciting sympathy from Vermonters who were no doubt ashamed of their state's participation in the Survey. (This is an especially effective tool after WWII and Hitler's ethnic cleansing.)
- 3) By swaying public opinion towards allowing less documented facts and more insinuation.
- 4) By influencing historians and others writing about them to include undocumented suppositions on the grounds that the Eugenics Survey had made real evidence scarce.

Examples of this include:

- a. Colin G. Calloway's *The Abenaki* in the *Indians of North America* series. His information is mostly about the Maine Abenaki, but he generalizes it to apply equally to Vermont, as if one branch of Algonkians is equal to another. Generalizations are abundant.
- b. Day's study of Odanak/St. Francis. It was quoted widely in the Abenaki Petition, but Day does not document the people in Vermont. He does mention that some have probably remained, but in his own journal, he notes that he went to Swanton, yet does not mention visiting with any Indians there. (Day, "Abenaki Journal," Dartmouth College, 1955).

## **Conclusion**

As I examined the petition, and the genealogical and historical material, and compared it with my understanding of federally acknowledged Indian tribes, I came to the conclusion that this petitioner cannot satisfy the criteria for federal tribal acknowledgment. There is no continuity of community or political authority evident

in the petitioner's records. The genealogical materials related to petitioner's ancestors do not establish descent from an Abenaki tribal entity. The petitioner simply does not have the necessary characteristics of an Indian tribe.